

NATIVE HAWAIIAN FEDERAL RECOGNITION

JOINT HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

AND THE

COMMITTEE ON RESOURCES

UNITED STATES HOUSE OF

REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2899

TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE
UNITED STATES' RELATIONSHIP WITH NATIVE HAWAIIANS

AND

H.R. 4904

TO EXPRESS THE POLICY OF THE UNITED STATES REGARDING THE
UNITED STATES' RELATIONSHIP WITH NATIVE HAWAIIANS, TO PRO-
VIDE A PROCESS FOR THE REORGANIZATION OF A NATIVE HAWAIIAN
GOVERNMENT AND THE RECOGNITION BY THE UNITED STATES OF
THE NATIVE HAWAIIAN GOVERNMENT

AUGUST 28, 2000
HONOLULU, HI

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ADDENDUM



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NATIVE HAWAIIAN FEDERAL RECOGNITION

MONDAY, AUGUST 28, 2000

U.S. SENATE, COMMITTEE ON INDIAN AFFAIRS, MEETING
JOINTLY WITH THE COMMITTEE ON RESOURCES, U.S.
HOUSE OF REPRESENTATIVES,

Honolulu, HI

The committee met, pursuant to notice, at 8 a.m. at the Neil Blaisdell Center, 777 Ward Avenue, Honolulu, Oahu, HI, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senators Inouye and Akaka; Representatives Mink and Abercrombie, and Delegate Faleomavaega.

[Text of S. 2899 and H.R. 4904 follow:]

106TH CONGRESS
2D SESSION

S. 2899

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2000

Mr. AKAKA (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To express the policy of the United States regarding the United States' relationship with Native Hawaiians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress finds that—

5 (1) the Constitution vests Congress with the au-
6 thority to address the conditions of the indigenous,
7 native people of the United States;

8 (2) Native Hawaiians, the native people of the
9 State of Hawaii are indigenous, native people of the
10 United States;

1 (3) the United States has a special trust rela-
2 tionship to promote the welfare of the native people
3 of the United States, including Native Hawaiians;

4 (4) under the treaty-making power of the
5 United States, Congress exercised its constitutional
6 authority to confirm a treaty between the United
7 States and the government that represented the Ha-
8 waiian people, and from 1826 until 1893, the United
9 States recognized the independence of the Kingdom
10 of Hawaii, extended full diplomatic recognition to
11 the Hawaiian Government, and entered into treaties
12 and conventions with the Hawaiian monarchs to gov-
13 ern commerce and navigation in 1826, 1842, 1849,
14 1875, and 1887;

15 (5) pursuant to the provisions of the Hawaiian
16 Homes Commission Act, 1920 (42 Stat. 108, chap-
17 ter 42), the United States set aside 200,000 acres
18 of land in the Federal territory that later became
19 the State of Hawaii in order to establish a homeland
20 for the native people of Hawaii, Native Hawaiians;

21 (6) by setting aside 200,000 acres of land for
22 Native Hawaiian homesteads and farms, the Act as-
23 sists the Native Hawaiian community in maintaining
24 distinct native settlements throughout the State of
25 Hawaii;

1 (7) approximately 6,800 Native Hawaiian les-
2 sees and their family members reside on Hawaiian
3 Home Lands and approximately 18,000 Native Ha-
4 waiians who are eligible to reside on the Home
5 Lands are on a waiting list to receive assignments
6 of land;

7 (8) the Hawaiian Home Lands continue to pro-
8 vide an important foundation for the ability of the
9 Native Hawaiian community to maintain the prac-
10 tice of Native Hawaiian culture, language, and tradi-
11 tions, and Native Hawaiians have maintained other
12 distinctly native areas in Hawaii;

13 (9) on November 23, 1993, Public Law 103-
14 150 (107 Stat. 1510) (commonly known as the Apol-
15 ogy Resolution) was enacted into law, extending an
16 apology on behalf of the United States to the Native
17 people of Hawaii for the United States' role in the
18 overthrow of the Kingdom of Hawaii;

19 (10) the Apology Resolution acknowledges that
20 the overthrow of the Kingdom of Hawaii occurred
21 with the active participation of agents and citizens
22 of the United States and further acknowledges that
23 the Native Hawaiian people never directly relin-
24 quished their claims to their inherent sovereignty as
25 a people over their national lands to the United

1 States, either through their monarchy or through a
2 plebiscite or referendum;

3 (11) the Apology Resolution expresses the com-
4 mitment of Congress and the President to acknowl-
5 edge the ramifications of the overthrow of the King-
6 dom of Hawaii and to support reconciliation efforts
7 between the United States and Native Hawaiians;
8 and to have Congress and the President, through the
9 President's designated officials, consult with Native
10 Hawaiians on the reconciliation process as called for
11 under the Apology Resolution;

12 (12) despite the overthrow of the Hawaiian gov-
13 ernment, Native Hawaiians have continued to main-
14 tain their separate identity as a distinct native com-
15 munity through the formation of cultural, social, and
16 political institutions, and to give expression to their
17 rights as native people to self-determination and
18 self-governance as evidenced through their participa-
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct
21 Native Hawaiian community through the provision
22 of governmental services to Native Hawaiians, in-
23 cluding the provision of health care services, edu-
24 cational programs, employment and training pro-
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,
2 native language immersion programs and native lan-
3 guage immersion schools from kindergarten through
4 high school, as well as college and master's degree
5 programs in native language immersion instruction,
6 and traditional justice programs, and by continuing
7 their efforts to enhance Native Hawaiian self-deter-
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in
10 Native Hawaiian cultural practices, traditional agri-
11 cultural methods, fishing and subsistence practices,
12 maintenance of cultural use areas and sacred sites,
13 protection of burial sites, and the exercise of their
14 traditional rights to gather medicinal plants and
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-
17 serve, develop, and transmit to future Native Hawai-
18 ian generations their ancestral lands and Native Ha-
19 waiian political and cultural identity in accordance
20 with their traditions, beliefs, customs and practices,
21 language, and social and political institutions, and to
22 achieve greater self-determination over their own af-
23 fairs;

24 (16) this Act responds to the desire of the Na-
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of
2 Federal law for the Native Hawaiian people to exer-
3 cise their inherent rights as a distinct aboriginal, in-
4 digenous, native community to reorganize a Native
5 Hawaiian governing body for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;

8 (17) the United States has declared that—

9 (A) the United States has a special respon-
10 sibility for the welfare of the native peoples of
11 the United States, including Native Hawaiians;

12 (B) Congress has identified Native Hawai-
13 ians as a distinct indigenous group within the
14 scope of its Indian affairs power, and has en-
15 acted dozens of statutes on their behalf pursu-
16 ant to its recognized trust responsibility; and

17 (C) Congress has also delegated broad au-
18 thority to administer a portion of the federal
19 trust responsibility to the State of Hawaii;

20 (18) the United States has recognized and re-
21 affirmed the special trust relationship with the Na-
22 tive Hawaiian people through—

23 (A) the enactment of the Act entitled “An
24 Act to provide for the admission of the State of

1 Hawaii into the Union”, approved March 18,
2 1959 (Public Law 86-3; 73 Stat. 4) by—

3 (i) ceding to the State of Hawaii title
4 to the public lands formerly held by the
5 United States, and mandating that those
6 lands be held in public trust for the better-
7 ment of the conditions of Native Hawai-
8 ians; and

9 (ii) transferring the United States’ re-
10 sponsibility for the administration of the
11 Hawaiian Home Lands to the State of Ha-
12 waii, but retaining the authority to enforce
13 the trust, including the exclusive right of
14 the United States to consent to any actions
15 affecting the lands which comprise the cor-
16 pus of the trust and any amendments to
17 the Hawaiian Homes Commission Act,
18 1920 (42 Stat. 108, chapter 42) that are
19 enacted by the legislature of the State of
20 Hawaii affecting the beneficiaries under
21 the Act;

22 (19) the United States continually has recog-
23 nized and reaffirmed that—

24 (A) Native Hawaiians have a cultural, his-
25 toric, and land-based link to the aboriginal, na-

1 tive people who exercised sovereignty over the
2 Hawaiian Islands;

3 (B) Native Hawaiians have never relin-
4 quished their claims to sovereignty or their sov-
5 ereign lands;

6 (C) the United States extends services to
7 Native Hawaiians because of their unique sta-
8 tus as the aboriginal, native people of a once
9 sovereign nation with whom the United States
10 has a political and legal relationship; and

11 (D) the special trust relationship of Amer-
12 ican Indians, Alaska Natives, and Native Ha-
13 waiians to the United States arises out of their
14 status as aboriginal, indigenous, native people
15 of the United States.

16 **SEC. 2. DEFINITIONS.**

17 In this Act:

18 (1) ABORIGINAL, INDIGENOUS, NATIVE PEO-
19 PLE.—The term “aboriginal, indigenous, native peo-
20 ple” means those people whom Congress has recog-
21 nized as the original inhabitants of the lands and
22 who exercised sovereignty prior to European contact
23 in the areas that later became part of the United
24 States;

1 (2) ADULT MEMBERS.—The term “adult mem-
2 bers” means those Native Hawaiians who have at-
3 tained the age of 18 at the time the Secretary pub-
4 lishes the initial roll in the Federal Register, as pro-
5 vided in section 7(a)(4) of this Act.

6 (3) APOLOGY RESOLUTION.—The term “Apol-
7 ogy Resolution” means Public Law 103–150 (107
8 Stat. 1510), a joint resolution offering an apology to
9 Native Hawaiians on behalf of the United States for
10 the participation of agents of the United States in
11 the January 17, 1893 overthrow of the Kingdom of
12 Hawaii.

13 (4) COMMISSION.—The term “Commission”
14 means the commission established in section 7 of
15 this Act to certify that the adult members of the Na-
16 tive Hawaiian community contained on the roll de-
17 veloped under that section meet the definition of Na-
18 tive Hawaiian, as defined in paragraph (6)(A).

19 (5) INDIGENOUS, NATIVE PEOPLE.—The term
20 “indigenous, native people” means the lineal de-
21 scendants of the aboriginal, indigenous, native peo-
22 ple of the United States.

23 (6) NATIVE HAWAIIAN.—

24 (A) Prior to the recognition by the United
25 States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,
 2 the term “Native Hawaiian” means the indige-
 3 nous, native people of Hawaii who are the lineal
 4 descendants of the aboriginal, indigenous, na-
 5 tive people who resided in the islands that now
 6 comprise the State of Hawaii on January 1,
 7 1893, and who occupied and exercised sov-
 8 ereignty in the Hawaiian archipelago, including
 9 the area that now constitutes the State of Ha-
 10 waii, as evidenced by (but not limited to)—

11 (i) genealogical records;
 12 (ii) Native Hawaiian kupuna (elders)
 13 verification or affidavits;

14 (iii) church or census records; or
 15 (iv) government birth or death certifi-
 16 cates or other vital statistics records;

17 (B) Following the recognition by the
 18 United States of the Native Hawaiian govern-
 19 ing body under section 7(d) of this Act, the
 20 term “Native Hawaiian” shall have the mean-
 21 ing given to such term in the organic governing
 22 documents of the Native Hawaiian governing
 23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The
 25 term “Native Hawaiian governing body” means the

1 adult members of the governing body of the Native
2 Hawaiian people that is recognized by the United
3 States under the authority of section 7(d) of this
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING
6 COUNCIL.—The term “Native Hawaiian Interim
7 Governing Council” means the interim governing
8 council that is authorized to exercise the powers and
9 authorities recognized in section 7(b) of this Act.

10 (9) ROLL.—The term “roll” means the roll that
11 is developed under the authority of section 7(a) of
12 this Act.

13 (10) SECRETARY.—The term “Secretary”
14 means the Secretary of the Department of the Inte-
15 rior.

16 (11) TASK FORCE.—The term “Task Force”
17 means the Native Hawaiian Interagency Task Force
18 established under the authority of section 6 of this
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct
23 aboriginal, indigenous, native people, with whom the
24 United States has a political and legal relationship;

1 (2) the United States has a special trust rela-
2 tionship to promote the welfare of Native Hawaiians;

3 (3) Congress possesses the authority under the
4 Constitution to enact legislation to address the con-
5 ditions of Native Hawaiians and has exercised this
6 authority through the enactment of—

7 (A) the Hawaiian Homes Commission Act,
8 1920 (42 Stat. 108, chapter 42);

9 (B) the Act entitled “An Act to provide for
10 the admission of the State of Hawaii into the
11 Union”, approved March 18, 1959 (Public Law
12 86–3; 73 Stat. 4); and

13 (C) more than 150 other Federal laws ad-
14 dressing the conditions of Native Hawaiians;

15 (4) Native Hawaiians have—

16 (A) an inherent right to autonomy in their
17 internal affairs;

18 (B) an inherent right of self-determination
19 and self-governance; and

20 (C) the right to reorganize a Native Ha-
21 waiian governing body; and

22 (5) the United States shall continue to engage
23 in a process of reconciliation and political relations
24 with the Native Hawaiian people.

1 **SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL**
2 **TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.**

3 (a) **IN GENERAL.**—There is established within the
4 Office of the Secretary of the Department of the Interior
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) **DUTIES OF THE OFFICE.**—The Office of Special
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust
9 relationship between the Native Hawaiian people
10 and the United States through the Secretary, and
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-
13 ian governing body by the United States as provided
14 for in section 7(d) of this Act, effectuate and coordi-
15 nate the special trust relationship between the Na-
16 tive Hawaiian governing body and the United States
17 through the Secretary, and with all other Federal
18 agencies;

19 (3) fully integrate the principle and practice of
20 meaningful, regular, and appropriate consultation
21 with the Native Hawaiian people by providing timely
22 notice to, and consulting with the Native Hawaiian
23 people prior to taking any actions that may have the
24 potential to significantly or uniquely affect Native
25 Hawaiian resources, rights, or lands, and upon the
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-
2 grate the principle and practice of meaningful, regu-
3 lar, and appropriate consultation with the Native
4 Hawaiian governing body by providing timely notice
5 to, and consulting with the Native Hawaiian people
6 prior to taking any actions that may have the poten-
7 tial to significantly affect Native Hawaiian re-
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-
10 agency Task Force, other Federal agencies, and with
11 relevant agencies of the State of Hawaii on policies,
12 practices, and proposed actions affecting Native Ha-
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-
15 mittal to the Committee on Indian Affairs of the
16 Senate, the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee on Re-
18 sources of the House of Representatives of an an-
19 nual report detailing the activities of the Interagency
20 Task Force established under section 6 of this Act
21 that are undertaken with respect to the continuing
22 process of reconciliation and to effect meaningful
23 consultation with the Native Hawaiian people and
24 the Native Hawaiian governing body and providing
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated
 2 under the authority of Federal law;

3 (6) be responsible for continuing the process of
 4 reconciliation with the Native Hawaiian people, and
 5 upon the recognition of the Native Hawaiian govern-
 6 ing body by the United States as provided for in sec-
 7 tion 7(d) of this Act, be responsible for continuing
 8 the process of reconciliation with the Native Hawai-
 9 ian governing body; and

10 (7) assist the Native Hawaiian people in facili-
 11 tating a process for self-determination, including but
 12 not limited to the provision of technical assistance in
 13 the development of the roll under section 7(a) of this
 14 Act, the organization of the Native Hawaiian In-
 15 terim Governing Council as provided for in section
 16 7(b) of this Act, and the reorganization of the Na-
 17 tive Hawaiian governing body as provided for in sec-
 18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
 20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate
 22 official within the Department of Justice to assist the Of-
 23 fice of the Special Trustee for Native Hawaiian Affairs
 24 in the implementation and protection of the rights of Na-
 25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the
2 Native Hawaiian governing body as provided for in section
3 7(d) of this Act, in the implementation and protection of
4 the rights of the Native Hawaiian governing body and its
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) **ESTABLISHMENT.**—There is established an inter-
8 agency task force to be known as the “Native Hawaiian
9 Interagency Task Force”.

10 (b) **COMPOSITION.**—The Task Force shall be com-
11 posed of officials, to be appointed by the President,
12 from—

13 (1) each Federal agency that establishes or im-
14 plements policies that affect Native Hawaiians or
15 whose actions may significantly or uniquely impact
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native
18 Hawaiian Affairs established under section 4 of this
19 Act; and

20 (3) the Executive Office of the President.

21 (c) **LEAD AGENCIES.**—The Department of the Inte-
22 rior and the Department of Justice shall serve as the lead
23 agencies of the Task Force, and meetings of the Task
24 Force shall be convened at the request of the lead agen-
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of
2 the Office of Special Trustee for Native Hawaiian Affairs
3 established under the authority of section 4 of this Act
4 and the Attorney General's designee under the authority
5 of section 5 of this Act shall serve as co-chairs of the Task
6 Force.

7 (e) DUTIES.—The primary responsibilities of the
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-
10 fect Native Hawaiians or actions by any agency or
11 agencies of the Federal Government which may sig-
12 nificantly or uniquely impact on Native Hawaiian re-
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops
15 a policy on consultation with the Native Hawaiian
16 people, and upon recognition of the Native Hawaiian
17 governing body by the United States as provided in
18 section 7(d) of this Act, consultation with the Native
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
 2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
 3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
 4 **GANIZATION OF A NATIVE HAWAIIAN IN-**
 5 **TERIM GOVERNING COUNCIL AND A NATIVE**
 6 **HAWAIIAN GOVERNING BODY, AND FOR THE**
 7 **RECOGNITION OF THE NATIVE HAWAIIAN**
 8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-
 11 bers of the Native Hawaiian community who wish to
 12 participate in the reorganization of a Native Hawai-
 13 ian governing body shall prepare a roll for the pur-
 14 pose of the organization of a Native Hawaiian In-
 15 terim Governing Council. The roll shall include the
 16 names of—

17 (A) the adult members of the Native Ha-
 18 waiian community who wish to become mem-
 19 bers of a Native Hawaiian governing body and
 20 who are the lineal descendants of the aborigi-
 21 nal, indigenous, native people who resided in
 22 the islands that now comprise the State of Ha-
 23 waii on January 1, 1893, and who occupied and
 24 exercised sovereignty in the Hawaiian archipel-
 25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not lim-
2 ited to)—

3 (i) genealogical records;

4 (ii) Native Hawaiian kupuna (elders)
5 verification or affidavits;

6 (iii) church or census records; or

7 (iv) government birth or death certifi-
8 cates or other vital statistics records; and

9 (B) the children of the adult members list-
10 ed on the roll prepared under this subsection.

11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to
13 be established a Commission to be composed of
14 9 members for the purpose of certifying that
15 the adult members of the Native Hawaiian com-
16 munity on the roll meet the definition of Native
17 Hawaiian, as defined in section 2(6)(A) of this
18 Act. The members of the Commission shall have
19 expertise in the certification of Native Hawaiian
20 ancestry.

21 (B) CERTIFICATION.—The Commission
22 shall certify to the Secretary that the individ-
23 uals listed on the roll developed under the au-
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall
4 promptly provide notice to the Secretary if any of
5 the individuals listed on the roll should be removed
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-
8 ceipt by the Secretary of the roll developed under
9 the authority of this subsection and certified by the
10 Commission under the authority of paragraph (2),
11 the Secretary shall certify that the roll is consistent
12 with applicable Federal law by publishing the roll in
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication
15 of the roll developed under the authority of this sub-
16 section shall be for the purpose of providing any
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the
19 roll the name of an individual who meets the
20 definition of Native Hawaiian, as defined in
21 section 2(6)(A) of this Act, and who is not list-
22 ed on the roll; or

23 (B) petition the Secretary to remove from
24 the roll the name of an individual who does not
25 meet such definition.

1 (6) DEADLINE FOR PETITIONS.—Any petition
2 described in paragraph (5) shall be filed with the
3 Secretary within 90 days of the date of the publica-
4 tion of the roll in the Federal Register, as author-
5 ized under paragraph (4).

6 (7) CERTIFICATION OF ADDITIONAL NATIVE
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—

8 (A) SUBMISSION.—Within 30 days of re-
9 ceiving a petition to add the name of an individ-
10 ual to the roll, the Secretary shall submit the
11 name of each individual who is the subject of a
12 petition to add his or her name to the roll to
13 the Commission for certification that the indi-
14 vidual meets the definition of Native Hawaiian,
15 as defined in section 2(6)(A) of this Act.

16 (B) CERTIFICATION.—Within 30 days of
17 receiving a petition from the Secretary to have
18 a name added to or removed from the roll, the
19 Commission shall certify to the Secretary
20 that—

21 (i) the individual meets the definition
22 of Native Hawaiian, as defined in section
23 2(6)(A) of this Act; or

1 (ii) the individual does not meet the
2 definition of Native Hawaiian, as so de-
3 fined.

4 Upon such certification, the Secretary shall add
5 or remove the name of the individual on the
6 roll, as appropriate.

7 (8) HEARING.—

8 (A) IN GENERAL.—The Secretary shall
9 conduct a hearing on the record within 45 days
10 of the receipt by the Secretary of—

11 (i) a certification by the Commission
12 that an individual does not meet the defini-
13 tion of Native Hawaiian, as defined in sec-
14 tion 2(6)(A) of this Act; or

15 (ii) a petition to remove the name of
16 any individual listed on the roll submitted
17 to the Secretary by the Commission.

18 (B) TESTIMONY.—At the hearing con-
19 ducted in accordance with this paragraph, the
20 Secretary may receive testimony from the peti-
21 tioner, a representative of the Commission, the
22 individual whose name is the subject of the pe-
23 tition, and any other individuals who may have
24 the necessary expertise to provide the Secretary
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-
2 tion meets the definition of Native Hawaiian, as
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30
5 days of the date of the conclusion of the hear-
6 ing conducted in accordance with this para-
7 graph, the Secretary shall make a determina-
8 tion regarding whether the individual whose
9 name is the subject of a petition meets the defi-
10 nition of Native Hawaiian, as defined in section
11 2(6)(A) of this Act. Such a determination shall
12 be a final determination for purposes of judicial
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United
16 States District Court for the District of Hawaii
17 shall have jurisdiction to review the record of
18 the decision developed by the Secretary and the
19 Secretary's final determination under para-
20 graph (8) and shall make a final judgment re-
21 garding such determination.

22 (B) NOTICE.—If the district court deter-
23 mines that an individual's name should be
24 added to the roll because that individual meets
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-
2 ual's name should be removed from the roll be-
3 cause that individual does not meet such defini-
4 tion, the district court shall so advise the Sec-
5 retary and the Secretary shall add or remove
6 the individual's name from the roll, consistent
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except
9 for those petitions which remain the subject of judi-
10 cial review under the authority of paragraph (9), the
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-
13 ister within 290 days of the receipt by the Sec-
14 retary of the roll prepared under the authority
15 of paragraph (1); and

16 (B) subsequently publish in the Federal
17 Register the names of any individuals that the
18 district court directs be added or removed from
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-
21 tion of the final roll shall serve as the basis for the
22 eligibility of adult members listed on the roll to par-
23 ticipate in all referenda and elections associated with
24 the organization of a Native Hawaiian Interim Gov-
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within
5 90 days of the date of the publication of the
6 final roll in the Federal Register, the Secretary
7 shall announce the date of a general meeting of
8 the adult members of those listed on the roll to
9 nominate candidates from among the adult
10 members listed on the roll for election to the
11 Native Hawaiian Interim Governing Council.
12 The criteria for candidates to serve on the Na-
13 tive Hawaiian Interim Governing Council shall
14 be developed by the adult members listed on the
15 roll at the general meeting. The general meet-
16 ing may consist of meetings on each island or
17 at such sites as to secure the maximum partici-
18 pation of the adult members listed on the roll.
19 Such general meeting (or meetings) shall be
20 held within 30 days of the Secretary's an-
21 nouncement.

22 (B) ELECTION.—Within 45 days of the
23 general meeting (or meetings), the Secretary
24 shall assist the Native Hawaiian community in
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-
 2 bership of the Native Hawaiian Interim Govern-
 3 ing Council from among the nominees submit-
 4 ted to the Secretary from the general meeting.
 5 The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-
 7 prove the Native Hawaiian Interim Governing
 8 Council elected pursuant to this subsection if
 9 the requirements of this section relating to the
 10 nominating and election process have been met.

11 (2) POWERS.—

12 (A) IN GENERAL.—The Native Hawaiian
 13 Interim Governing Council shall represent those
 14 on the roll in the implementation of this Act
 15 and shall have no powers other than those given
 16 to it in accordance with this Act.

17 (B) TERMINATION.—The Native Hawaiian
 18 Interim Governing Council shall have no power
 19 or authority under this Act after the time which
 20 the duly elected officers of the Native Hawaiian
 21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian
 24 Interim Governing Council shall conduct a ref-
 25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited
2 to) the following:

3 (i) The proposed elements of the or-
4 ganic governing documents of a Native
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-
7 ties to be exercised by a Native Hawaiian
8 governing body, as well as the proposed
9 privileges and immunities of a Native Ha-
10 waiian governing body.

11 (iii) The proposed civil rights and pro-
12 tection of such rights of the members of a
13 Native Hawaiian governing body and all
14 persons subject to the authority of a Na-
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOVERN-
17 ING DOCUMENTS.—Based upon the referendum
18 authorized in subparagraph (A), the Native Ha-
19 waiian Interim Governing Council shall develop
20 proposed organic governing documents for a
21 Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall
23 distribute to all adult members of those listed
24 on the roll, a copy of the proposed organic gov-
25 erning documents, as drafted by the Native Ha-

1 waiian Interim Governing Council, along with a
2 brief impartial description of the proposed or-
3 ganic governing documents.

4 (D) CONSULTATION.—The Native Hawai-
5 ian Interim Governing Council shall freely con-
6 sult with those listed on the roll concerning the
7 text and description of the proposed organic
8 governing documents.

9 (4) ELECTIONS.—

10 (A) IN GENERAL.—Upon the request of
11 the Native Hawaiian Interim Governing Coun-
12 cil, the Secretary shall hold an election for the
13 purpose of ratifying the proposed organic gov-
14 erning documents. If the Secretary fails to act
15 within 45 days of the request by the Council,
16 the Council is authorized to conduct the elec-
17 tion.

18 (B) FAILURE TO ADOPT GOVERNING DOCU-
19 MENTS.—If the proposed organic governing
20 documents are not adopted by a majority vote
21 of the adult members listed on the roll, the Na-
22 tive Hawaiian Interim Governing Council shall
23 consult with the adult members listed on the
24 roll to determine which elements of the pro-
25 posed organic governing documents were found

1 to be unacceptable, and based upon such con-
 2 sultation, the Council shall propose changes to
 3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the
 5 Native Hawaiian Interim Governing Council,
 6 the Secretary shall hold a second election for
 7 the purpose of ratifying the proposed organic
 8 governing documents. If the Secretary fails to
 9 act within 45 days of the request by the Coun-
 10 cil, the Council is authorized to conduct the sec-
 11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-
 13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of
 15 the Native Hawaiian governing body of the indige-
 16 nous, native people of Hawaii to organize for its
 17 common welfare, and to adopt appropriate organic
 18 governing documents is hereby recognized by the
 19 United States.

20 (2) RATIFICATION.—The organic governing
 21 documents of the Native Hawaiian governing body
 22 shall become effective when ratified by a majority
 23 vote of the adult members listed on the roll, and ap-
 24 proved by the Secretary upon the Secretary's deter-
 25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-
2 cial trust relationship between the United States and
3 its native people. If the Secretary fails to make such
4 a determination within 45 days of the ratification of
5 the organic governing documents by the adult mem-
6 bers listed on the roll, the organic governing docu-
7 ments shall be deemed to have been approved by the
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—
10 Within 45 days after the Secretary has approved the
11 organic governing documents or the organic govern-
12 ing documents are deemed approved, the Secretary
13 shall assist the Native Hawaiian Interim Governing
14 Council in holding an election by secret ballot for the
15 purpose of determining the individuals who will serve
16 as governing body officers as provided in the organic
17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of
19 this initial election and notwithstanding any provi-
20 sion in the organic governing documents to the con-
21 trary, absentee balloting shall be permitted and all
22 adult members of the Native Hawaiian governing
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and
 2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-
 4 MENTS.—When ratified by a majority vote of the
 5 adult members of those listed on the roll, the organic
 6 governing documents shall be revocable by an elec-
 7 tion open to the adult members of the Native Ha-
 8 waiian governing body, and amendments to the or-
 9 ganic governing documents may be ratified by the
 10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-
 12 dition to all powers vested in the Native Hawaiian
 13 governing body by the duly ratified organic govern-
 14 ing documents, the organic governing documents
 15 shall also vest in the Native Hawaiian governing
 16 body the rights and powers to—

17 (A) exercise those governmental authorities
 18 that are recognized by the United States as the
 19 powers and authorities that are exercised by
 20 other governments representing the indigenous,
 21 native people of the United States;

22 (B) provide for the protection of the civil
 23 rights of the members of the Native Hawaiian
 24 governing body and all persons subject to the
 25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian
2 governing body exercises its authority consistent
3 with the requirements of section 202 of the Act
4 of April 11, 1968 (25 U.S.C. 1302);

5 (C) prevent the sale, disposition, lease, or
6 encumbrance of lands, interests in lands, or
7 other assets of the Native Hawaiian governing
8 body without the consent of the Native Hawai-
9 ian governing body;

10 (D) determine the membership in the Na-
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other
16 provision of law, upon the approval by the Secretary
17 of the organic governing documents of the Native
18 Hawaiian governing body and the election of officers
19 of the Native Hawaiian governing body, Federal rec-
20 ognition is hereby extended to the Native Hawaiian
21 governing body as the representative governing body
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-
24 LEGES.—Nothing contained in this Act shall dimin-
25 ish, alter, or amend any existing rights or privileges

1 enjoyed by the Native Hawaiian people which are
2 not inconsistent with the provisions of this Act.

3 (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-
4 ERNING BODY.—

5 (1) CHARTER OF INCORPORATION.—Upon peti-
6 tion of the Native Hawaiian governing body, the
7 Secretary may issue a charter of incorporation to
8 the Native Hawaiian governing body. Upon the
9 issuance of such charter of incorporation, the Native
10 Hawaiian governing body shall have the same status
11 under Federal law when acting in its corporate ca-
12 pacity as the status of Indian tribes that have been
13 issued a charter of incorporation under the authority
14 of section 17 of the Indian Reorganization Act (25
15 U.S.C. 477).

16 (2) ENUMERATED POWERS.—Such charter may
17 authorize the incorporated Native Hawaiian govern-
18 ing body to exercise the power to purchase, take by
19 gift, bequest, or otherwise, own, hold, manage, oper-
20 ate, and dispose of property of every description,
21 real and personal, including the power to purchase
22 lands and to issue an exchange of interests in cor-
23 porate property, and such further powers as may be
24 incidental to the conduct of corporate business, and
25 that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

7 (a) REAFFIRMATION.—The delegation by the United
8 States of authority to the State of Hawaii to address the
9 conditions of Native Hawaiians contained in the Act enti-
10 tled “An Act to provide for the admission of the State
11 of Hawaii into the Union” approved March 18, 1959
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13 (b) NEGOTIATIONS.—Upon the Federal recognition
14 of the Native Hawaiian governing body pursuant to sec-
15 tion 7(d) of this Act, the United States is authorized to
16 negotiate and enter into an agreement with the State of
17 Hawaii and the Native Hawaiian governing body regard-
18 ing the transfer of lands, resources, and assets dedicated
19 to Native Hawaiian use under existing law as in effect
20 on the date of enactment of this Act to the Native Hawai-
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23 Nothing in this Act is intended to serve as a settle-
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations and such delegations of authority as the Sec-
4 retary deems necessary to carry out the provisions of this
5 Act.

6 **SEC. 12. SEVERABILITY.**

7 In the event that any section or provision of this Act,
8 or any amendment made by this Act is held invalid, it
9 is the intent of Congress that the remaining sections or
10 provisions of this Act, and the amendments made by this
11 Act, shall continue in full force and effect.

○

106TH CONGRESS
2D SESSION

H. R. 4904

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2000

Mr. ABERCROMBIE introduced the following bill; which was referred to the Committee on Resources

A BILL

To express the policy of the United States regarding the United States relationship with Native Hawaiians, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 Congress finds that—

5 (1) the Constitution vests Congress with the au-
6 thority to address the conditions of the indigenous,
7 native people of the United States;

8 (2) Native Hawaiians, the native people of the
9 State of Hawaii are indigenous, native people of the
10 United States;

1 (3) the United States has a special trust rela-
2 tionship to promote the welfare of the native people
3 of the United States, including Native Hawaiians;

4 (4) under the treaty-making power of the
5 United States, Congress exercised its constitutional
6 authority to confirm a treaty between the United
7 States and the government that represented the Ha-
8 waiian people, and from 1826 until 1893, the United
9 States recognized the independence of the Kingdom
10 of Hawaii, extended full diplomatic recognition to
11 the Hawaiian Government, and entered into treaties
12 and conventions with the Hawaiian monarchs to gov-
13 ern commerce and navigation in 1826, 1842, 1849,
14 1875, and 1887;

15 (5) pursuant to the provisions of the Hawaiian
16 Homes Commission Act, 1920 (42 Stat. 108, chap-
17 ter 42), the United States set aside 200,000 acres
18 of land in the Federal territory that later became
19 the State of Hawaii in order to establish a homeland
20 for the native people of Hawaii, Native Hawaiians;

21 (6) by setting aside 200,000 acres of land for
22 Native Hawaiian homesteads and farms, the Act as-
23 sists the Native Hawaiian community in maintaining
24 distinct native settlements throughout the State of
25 Hawaii;

1 (7) approximately 6,800 Native Hawaiian les-
2 sees and their family members reside on Hawaiian
3 Home Lands and approximately 18,000 Native Ha-
4 waiians who are eligible to reside on the Home
5 Lands are on a waiting list to receive assignments
6 of land;

7 (8) the Hawaiian Home Lands continue to pro-
8 vide an important foundation for the ability of the
9 Native Hawaiian community to maintain the prac-
10 tice of Native Hawaiian culture, language, and tradi-
11 tions, and Native Hawaiians have maintained other
12 distinctly native areas in Hawaii;

13 (9) on November 23, 1993, Public Law 103–
14 150 (107 Stat. 1510) (commonly known as the Apol-
15 ogy Resolution) was enacted into law, extending an
16 apology on behalf of the United States to the Native
17 people of Hawaii for the United States role in the
18 overthrow of the Kingdom of Hawaii;

19 (10) the Apology Resolution acknowledges that
20 the overthrow of the Kingdom of Hawaii occurred
21 with the active participation of agents and citizens
22 of the United States and further acknowledges that
23 the Native Hawaiian people never directly relin-
24 quished their claims to their inherent sovereignty as
25 a people over their national lands to the United

1 States, either through their monarchy or through a
2 plebiscite or referendum;

3 (11) the Apology Resolution expresses the com-
4 mitment of Congress and the President to acknowl-
5 edge the ramifications of the overthrow of the King-
6 dom of Hawaii and to support reconciliation efforts
7 between the United States and Native Hawaiians;
8 and to have Congress and the President, through the
9 President's designated officials, consult with Native
10 Hawaiians on the reconciliation process as called for
11 under the Apology Resolution;

12 (12) despite the overthrow of the Hawaiian gov-
13 ernment, Native Hawaiians have continued to main-
14 tain their separate identity as a distinct native com-
15 munity through the formation of cultural, social, and
16 political institutions, and to give expression to their
17 rights as native people to self-determination and
18 self-governance as evidenced through their participa-
19 tion in the Office of Hawaiian Affairs;

20 (13) Native Hawaiians also maintain a distinct
21 Native Hawaiian community through the provision
22 of governmental services to Native Hawaiians, in-
23 cluding the provision of health care services, edu-
24 cational programs, employment and training pro-
25 grams, children's services, conservation programs,

1 fish and wildlife protection, agricultural programs,
2 native language immersion programs and native lan-
3 guage immersion schools from kindergarten through
4 high school, as well as college and master's degree
5 programs in native language immersion instruction,
6 and traditional justice programs, and by continuing
7 their efforts to enhance Native Hawaiian self-deter-
8 mination and local control;

9 (14) Native Hawaiians are actively engaged in
10 Native Hawaiian cultural practices, traditional agri-
11 cultural methods, fishing and subsistence practices,
12 maintenance of cultural use areas and sacred sites,
13 protection of burial sites, and the exercise of their
14 traditional rights to gather medicinal plants and
15 herbs, and food sources;

16 (15) the Native Hawaiian people wish to pre-
17 serve, develop, and transmit to future Native Hawai-
18 ian generations their ancestral lands and Native Ha-
19 waiian political and cultural identity in accordance
20 with their traditions, beliefs, customs and practices,
21 language, and social and political institutions, and to
22 achieve greater self-determination over their own af-
23 fairs;

24 (16) this Act responds to the desire of the Na-
25 tive Hawaiian people for enhanced self-determination

1 by establishing a process within the framework of
2 Federal law for the Native Hawaiian people to exer-
3 cise their inherent rights as a distinct aboriginal, in-
4 digenous, native community to reorganize a Native
5 Hawaiian governing body for the purpose of giving
6 expression to their rights as native people to self-de-
7 termination and self-governance;

8 (17) the United States has declared that—

9 (A) the United States has a special respon-
10 sibility for the welfare of the native peoples of
11 the United States, including Native Hawaiians;

12 (B) Congress has identified Native Hawai-
13 ians as a distinct indigenous group within the
14 scope of its Indian affairs power, and has en-
15 acted dozens of statutes on their behalf pursu-
16 ant to its recognized trust responsibility; and

17 (C) Congress has also delegated broad au-
18 thority to administer a portion of the federal
19 trust responsibility to the State of Hawaii;

20 (18) the United States has recognized and re-
21 affirmed the special trust relationship with the Na-
22 tive Hawaiian people through—

23 (A) the enactment of the Act entitled “An
24 Act to provide for the admission of the State of

1 Hawaii into the Union”, approved March 18,
2 1959 (Public Law 86–3; 73 Stat. 4) by—

3 (i) ceding to the State of Hawaii title
4 to the public lands formerly held by the
5 United States, and mandating that those
6 lands be held in public trust for the better-
7 ment of the conditions of Native Hawai-
8 ians; and

9 (ii) transferring the United States re-
10 sponsibility for the administration of the
11 Hawaiian Home Lands to the State of Ha-
12 waii, but retaining the authority to enforce
13 the trust, including the exclusive right of
14 the United States to consent to any actions
15 affecting the lands which comprise the cor-
16 pus of the trust and any amendments to
17 the Hawaiian Homes Commission Act,
18 1920 (42 Stat. 108, chapter 42) that are
19 enacted by the legislature of the State of
20 Hawaii affecting the beneficiaries under
21 the Act;

22 (19) the United States continually has recog-
23 nized and reaffirmed that—

24 (A) Native Hawaiians have a cultural, his-
25 toric, and land-based link to the aboriginal, na-

1 tive people who exercised sovereignty over the
2 Hawaiian Islands;

3 (B) Native Hawaiians have never relin-
4 quished their claims to sovereignty or their sov-
5 ereign lands;

6 (C) the United States extends services to
7 Native Hawaiians because of their unique sta-
8 tus as the aboriginal, native people of a once
9 sovereign nation with whom the United States
10 has a political and legal relationship; and

11 (D) the special trust relationship of Amer-
12 ican Indians, Alaska Natives, and Native Ha-
13 waiians to the United States arises out of their
14 status as aboriginal, indigenous, native people
15 of the United States.

16 **SEC. 2. DEFINITIONS.**

17 In this Act:

18 (1) **ABORIGINAL, INDIGENOUS, NATIVE PEO-**
19 **PLE.**—The term “aboriginal, indigenous, native peo-
20 ple” means those people whom Congress has recog-
21 nized as the original inhabitants of the lands and
22 who exercised sovereignty prior to European contact
23 in the areas that later became part of the United
24 States;

1 (2) ADULT MEMBERS.—The term “adult mem-
2 bers” means those Native Hawaiians who have at-
3 tained the age of 18 at the time the Secretary pub-
4 lishes the initial roll in the Federal Register, as pro-
5 vided in section 7(a)(4) of this Act.

6 (3) APOLOGY RESOLUTION.—The term “Apol-
7 ogy Resolution” means Public Law 103–150 (107
8 Stat. 1510), a joint resolution offering an apology to
9 Native Hawaiians on behalf of the United States for
10 the participation of agents of the United States in
11 the January 17, 1893 overthrow of the Kingdom of
12 Hawaii.

13 (4) COMMISSION.—The term “Commission”
14 means the commission established in section 7 of
15 this Act to certify that the adult members of the Na-
16 tive Hawaiian community contained on the roll de-
17 veloped under that section meet the definition of Na-
18 tive Hawaiian, as defined in paragraph (6)(A).

19 (5) INDIGENOUS, NATIVE PEOPLE.—The term
20 “indigenous, native people” means the lineal de-
21 scendants of the aboriginal, indigenous, native peo-
22 ple of the United States.

23 (6) NATIVE HAWAIIAN.—

24 (A) Prior to the recognition by the United
25 States of a Native Hawaiian governing body

1 under the authority of section 7(d) of this Act,
2 the term “Native Hawaiian” means the indige-
3 nous, native people of Hawaii who are the lineal
4 descendants of the aboriginal, indigenous, na-
5 tive people who resided in the islands that now
6 comprise the State of Hawaii on January 1,
7 1893, and who occupied and exercised sov-
8 ereignty in the Hawaiian archipelago, including
9 the area that now constitutes the State of Ha-
10 waii, as evidenced by (but not limited to)—

11 (i) genealogical records;

12 (ii) Native Hawaiian kupuna (elders)
13 verification or affidavits;

14 (iii) church or census records; or

15 (iv) government birth or death certifi-
16 cates or other vital statistics records;

17 (B) Following the recognition by the
18 United States of the Native Hawaiian govern-
19 ing body under section 7(d) of this Act, the
20 term “Native Hawaiian” shall have the mean-
21 ing given to such term in the organic governing
22 documents of the Native Hawaiian governing
23 body.

24 (7) NATIVE HAWAIIAN GOVERNING BODY.—The
25 term “Native Hawaiian governing body” means the

1 adult members of the governing body of the Native
2 Hawaiian people that is recognized by the United
3 States under the authority of section 7(d) of this
4 Act.

5 (8) NATIVE HAWAIIAN INTERIM GOVERNING
6 COUNCIL.—The term “Native Hawaiian Interim
7 Governing Council” means the interim governing
8 council that is authorized to exercise the powers and
9 authorities recognized in section 7(b) of this Act.

10 (9) ROLL.—The term “roll” means the roll that
11 is developed under the authority of section 7(a) of
12 this Act.

13 (10) SECRETARY.—The term “Secretary”
14 means the Secretary of the Department of the Inte-
15 rior.

16 (11) TASK FORCE.—The term “Task Force”
17 means the Native Hawaiian Interagency Task Force
18 established under the authority of section 6 of this
19 Act.

20 **SEC. 3. UNITED STATES POLICY.**

21 The United States reaffirms that—

22 (1) Native Hawaiians are a unique and distinct
23 aboriginal, indigenous, native people, with whom the
24 United States has a political and legal relationship;

1 (2) the United States has a special trust rela-
2 tionship to promote the welfare of Native Hawaiians;

3 (3) Congress possesses the authority under the
4 Constitution to enact legislation to address the con-
5 ditions of Native Hawaiians and has exercised this
6 authority through the enactment of—

7 (A) the Hawaiian Homes Commission Act,
8 1920 (42 Stat. 108, chapter 42);

9 (B) the Act entitled “An Act to provide for
10 the admission of the State of Hawaii into the
11 Union”, approved March 18, 1959 (Public Law
12 86–3; 73 Stat. 4); and

13 (C) more than 150 other Federal laws ad-
14 dressing the conditions of Native Hawaiians;

15 (4) Native Hawaiians have—

16 (A) an inherent right to autonomy in their
17 internal affairs;

18 (B) an inherent right of self-determination
19 and self-governance; and

20 (C) the right to reorganize a Native Ha-
21 waiian governing body; and

22 (5) the United States shall continue to engage
23 in a process of reconciliation and political relations
24 with the Native Hawaiian people.

1 SEC. 4. ESTABLISHMENT OF THE OFFICE OF SPECIAL
2 TRUSTEE FOR NATIVE HAWAIIAN AFFAIRS.

3 (a) IN GENERAL.—There is established within the
4 Office of the Secretary of the Department of the Interior
5 the Office of Special Trustee for Native Hawaiian Affairs.

6 (b) DUTIES OF THE OFFICE.—The Office of Special
7 Trustee for Native Hawaiian Affairs shall—

8 (1) effectuate and coordinate the special trust
9 relationship between the Native Hawaiian people
10 and the United States through the Secretary, and
11 with all other Federal agencies;

12 (2) upon the recognition of the Native Hawai-
13 ian governing body by the United States as provided
14 for in section 7(d) of this Act, effectuate and coordi-
15 nate the special trust relationship between the Na-
16 tive Hawaiian governing body and the United States
17 through the Secretary, and with all other Federal
18 agencies;

19 (3) fully integrate the principle and practice of
20 meaningful, regular, and appropriate consultation
21 with the Native Hawaiian people by providing timely
22 notice to, and consulting with the Native Hawaiian
23 people prior to taking any actions that may have the
24 potential to significantly or uniquely affect Native
25 Hawaiian resources, rights, or lands, and upon the
26 recognition of the Native Hawaiian governing body

1 as provided for in section 7(d) of this Act, fully inte-
2 grate the principle and practice of meaningful, regu-
3 lar, and appropriate consultation with the Native
4 Hawaiian governing body by providing timely notice
5 to, and consulting with the Native Hawaiian people
6 prior to taking any actions that may have the poten-
7 tial to significantly affect Native Hawaiian re-
8 sources, rights, or lands;

9 (4) consult with the Native Hawaiian Inter-
10 agency Task Force, other Federal agencies, and with
11 relevant agencies of the State of Hawaii on policies,
12 practices, and proposed actions affecting Native Ha-
13 waiian resources, rights, or lands;

14 (5) be responsible for the preparation and sub-
15 mittal to the Committee on Indian Affairs of the
16 Senate, the Committee on Energy and Natural Re-
17 sources of the Senate, and the Committee on Re-
18 sources of the House of Representatives of an an-
19 nual report detailing the activities of the Interagency
20 Task Force established under section 6 of this Act
21 that are undertaken with respect to the continuing
22 process of reconciliation and to effect meaningful
23 consultation with the Native Hawaiian people and
24 the Native Hawaiian governing body and providing
25 recommendations for any necessary changes to exist-

1 ing Federal statutes or regulations promulgated
2 under the authority of Federal law;

3 (6) be responsible for continuing the process of
4 reconciliation with the Native Hawaiian people, and
5 upon the recognition of the Native Hawaiian govern-
6 ing body by the United States as provided for in sec-
7 tion 7(d) of this Act, be responsible for continuing
8 the process of reconciliation with the Native Hawai-
9 ian governing body; and

10 (7) assist the Native Hawaiian people in facili-
11 tating a process for self-determination, including but
12 not limited to the provision of technical assistance in
13 the development of the roll under section 7(a) of this
14 Act, the organization of the Native Hawaiian In-
15 terim Governing Council as provided for in section
16 7(b) of this Act, and the reorganization of the Na-
17 tive Hawaiian governing body as provided for in sec-
18 tion 7(c) of this Act.

19 **SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REP-**
20 **RESENTATIVE.**

21 The Attorney General shall designate an appropriate
22 official within the Department of Justice to assist the Of-
23 fice of the Special Trustee for Native Hawaiian Affairs
24 in the implementation and protection of the rights of Na-
25 tive Hawaiians and their political and legal relationship

1 with the United States, and upon the recognition of the
2 Native Hawaiian governing body as provided for in section
3 7(d) of this Act, in the implementation and protection of
4 the rights of the Native Hawaiian governing body and its
5 political and legal relationship with the United States.

6 **SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.**

7 (a) **ESTABLISHMENT.**—There is established an inter-
8 agency task force to be known as the “Native Hawaiian
9 Interagency Task Force”.

10 (b) **COMPOSITION.**—The Task Force shall be com-
11 posed of officials, to be appointed by the President,
12 from—

13 (1) each Federal agency that establishes or im-
14 plements policies that affect Native Hawaiians or
15 whose actions may significantly or uniquely impact
16 on Native Hawaiian resources, rights, or lands;

17 (2) the Office of the Special Trustee for Native
18 Hawaiian Affairs established under section 4 of this
19 Act; and

20 (3) the Executive Office of the President.

21 (c) **LEAD AGENCIES.**—The Department of the Inte-
22 rior and the Department of Justice shall serve as the lead
23 agencies of the Task Force, and meetings of the Task
24 Force shall be convened at the request of the lead agen-
25 cies.

1 (d) CO-CHAIRS.—The Task Force representative of
2 the Office of Special Trustee for Native Hawaiian Affairs
3 established under the authority of section 4 of this Act
4 and the Attorney General’s designee under the authority
5 of section 5 of this Act shall serve as co-chairs of the Task
6 Force.

7 (e) DUTIES.—The primary responsibilities of the
8 Task Force shall be—

9 (1) the coordination of Federal policies that af-
10 fect Native Hawaiians or actions by any agency or
11 agencies of the Federal Government which may sig-
12 nificantly or uniquely impact on Native Hawaiian re-
13 sources, rights, or lands;

14 (2) to assure that each Federal agency develops
15 a policy on consultation with the Native Hawaiian
16 people, and upon recognition of the Native Hawaiian
17 governing body by the United States as provided in
18 section 7(d) of this Act, consultation with the Native
19 Hawaiian governing body; and

20 (3) to assure the participation of each Federal
21 agency in the development of the report to Congress
22 authorized in section 4(b)(5) of this Act.

1 **SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR**
2 **THE ORGANIZATION OF A NATIVE HAWAIIAN**
3 **INTERIM GOVERNING COUNCIL, FOR THE OR-**
4 **GANIZATION OF A NATIVE HAWAIIAN IN-**
5 **TERIM GOVERNING COUNCIL AND A NATIVE**
6 **HAWAIIAN GOVERNING BODY, AND FOR THE**
7 **RECOGNITION OF THE NATIVE HAWAIIAN**
8 **GOVERNING BODY.**

9 (a) ROLL.—

10 (1) PREPARATION OF ROLL.—The adult mem-
11 bers of the Native Hawaiian community who wish to
12 participate in the reorganization of a Native Hawai-
13 ian governing body shall prepare a roll for the pur-
14 pose of the organization of a Native Hawaiian In-
15 terim Governing Council. The roll shall include the
16 names of—

17 (A) the adult members of the Native Ha-
18 waiian community who wish to become mem-
19 bers of a Native Hawaiian governing body and
20 who are the lineal descendants of the aborigi-
21 nal, indigenous, native people who resided in
22 the islands that now comprise the State of Ha-
23 waii on January 1, 1893, and who occupied and
24 exercised sovereignty in the Hawaiian archipel-
25 ago, including the area that now constitutes the

1 State of Hawaii, as evidenced by (but not lim-
2 ited to)—

3 (i) genealogical records;

4 (ii) Native Hawaiian kupuna (elders)
5 verification or affidavits;

6 (iii) church or census records; or

7 (iv) government birth or death certifi-
8 cates or other vital statistics records; and

9 (B) the children of the adult members list-
10 ed on the roll prepared under this subsection.

11 (2) CERTIFICATION AND SUBMISSION.—

12 (A) COMMISSION.—There is authorized to
13 be established a Commission to be composed of
14 9 members for the purpose of certifying that
15 the adult members of the Native Hawaiian com-
16 munity on the roll meet the definition of Native
17 Hawaiian, as defined in section 2(6)(A) of this
18 Act. The members of the Commission shall have
19 expertise in the certification of Native Hawaiian
20 ancestry.

21 (B) CERTIFICATION.—The Commission
22 shall certify to the Secretary that the individ-
23 uals listed on the roll developed under the au-
24 thority of this subsection are Native Hawaiians,

1 as defined in section 2(6)(A) of this Act, and
2 shall submit such roll to the Secretary.

3 (3) NOTIFICATION.—The Commission shall
4 promptly provide notice to the Secretary if any of
5 the individuals listed on the roll should be removed
6 from the roll on account of death.

7 (4) PUBLICATION.—Within 45 days of the re-
8 ceipt by the Secretary of the roll developed under
9 the authority of this subsection and certified by the
10 Commission under the authority of paragraph (2),
11 the Secretary shall certify that the roll is consistent
12 with applicable Federal law by publishing the roll in
13 the Federal Register.

14 (5) EFFECT OF PUBLICATION.—The publication
15 of the roll developed under the authority of this sub-
16 section shall be for the purpose of providing any
17 member of the public with an opportunity to—

18 (A) petition the Secretary to add to the
19 roll the name of an individual who meets the
20 definition of Native Hawaiian, as defined in
21 section 2(6)(A) of this Act, and who is not list-
22 ed on the roll; or

23 (B) petition the Secretary to remove from
24 the roll the name of an individual who does not
25 meet such definition.

1 (6) DEADLINE FOR PETITIONS.—Any petition
2 described in paragraph (5) shall be filed with the
3 Secretary within 90 days of the date of the publica-
4 tion of the roll in the Federal Register, as author-
5 ized under paragraph (4).

6 (7) CERTIFICATION OF ADDITIONAL NATIVE
7 HAWAIIANS FOR INCLUSION ON THE ROLL.—

8 (A) SUBMISSION.—Within 30 days of re-
9 ceiving a petition to add the name of an individ-
10 ual to the roll, the Secretary shall submit the
11 name of each individual who is the subject of a
12 petition to add his or her name to the roll to
13 the Commission for certification that the indi-
14 vidual meets the definition of Native Hawaiian,
15 as defined in section 2(6)(A) of this Act.

16 (B) CERTIFICATION.—Within 30 days of
17 receiving a petition from the Secretary to have
18 a name added to or removed from the roll, the
19 Commission shall certify to the Secretary
20 that—

21 (i) the individual meets the definition
22 of Native Hawaiian, as defined in section
23 2(6)(A) of this Act; or

1 (ii) the individual does not meet the
2 definition of Native Hawaiian, as so de-
3 fined.

4 Upon such certification, the Secretary shall add
5 or remove the name of the individual on the
6 roll, as appropriate.

7 (8) HEARING.—

8 (A) IN GENERAL.—The Secretary shall
9 conduct a hearing on the record within 45 days
10 of the receipt by the Secretary of—

11 (i) a certification by the Commission
12 that an individual does not meet the defini-
13 tion of Native Hawaiian, as defined in sec-
14 tion 2(6)(A) of this Act; or

15 (ii) a petition to remove the name of
16 any individual listed on the roll submitted
17 to the Secretary by the Commission.

18 (B) TESTIMONY.—At the hearing con-
19 ducted in accordance with this paragraph, the
20 Secretary may receive testimony from the peti-
21 tioner, a representative of the Commission, the
22 individual whose name is the subject of the pe-
23 tition, and any other individuals who may have
24 the necessary expertise to provide the Secretary
25 with relevant information regarding whether the

1 individual whose name is the subject of a peti-
2 tion meets the definition of Native Hawaiian, as
3 defined in section 2(6)(A) of this Act.

4 (C) FINAL DETERMINATION.—Within 30
5 days of the date of the conclusion of the hear-
6 ing conducted in accordance with this para-
7 graph, the Secretary shall make a determina-
8 tion regarding whether the individual whose
9 name is the subject of a petition meets the defi-
10 nition of Native Hawaiian, as defined in section
11 2(6)(A) of this Act. Such a determination shall
12 be a final determination for purposes of judicial
13 review.

14 (9) JUDICIAL REVIEW.—

15 (A) FINAL JUDGMENT.—The United
16 States District Court for the District of Hawaii
17 shall have jurisdiction to review the record of
18 the decision developed by the Secretary and the
19 Secretary's final determination under para-
20 graph (8) and shall make a final judgment re-
21 garding such determination.

22 (B) NOTICE.—If the district court deter-
23 mines that an individual's name should be
24 added to the roll because that individual meets
25 the definition of Native Hawaiian, as defined in

1 section 2(6)(A) of this Act, or that an individ-
2 ual's name should be removed from the roll be-
3 cause that individual does not meet such defini-
4 tion, the district court shall so advise the Sec-
5 retary and the Secretary shall add or remove
6 the individual's name from the roll, consistent
7 with the instructions of the district court.

8 (10) PUBLICATION OF FINAL ROLL.—Except
9 for those petitions which remain the subject of judi-
10 cial review under the authority of paragraph (9), the
11 Secretary shall—

12 (A) publish a final roll in the Federal Reg-
13 ister within 290 days of the receipt by the Sec-
14 retary of the roll prepared under the authority
15 of paragraph (1); and

16 (B) subsequently publish in the Federal
17 Register the names of any individuals that the
18 district court directs be added or removed from
19 the roll.

20 (11) EFFECT OF PUBLICATION.—The publica-
21 tion of the final roll shall serve as the basis for the
22 eligibility of adult members listed on the roll to par-
23 ticipate in all referenda and elections associated with
24 the organization of a Native Hawaiian Interim Gov-
25 erning Council.

1 (b) ORGANIZATION OF THE NATIVE HAWAIIAN IN-
2 TERIM GOVERNING COUNCIL.—

3 (1) ORGANIZATION.—

4 (A) DATE OF GENERAL MEETING.—Within
5 90 days of the date of the publication of the
6 final roll in the Federal Register, the Secretary
7 shall announce the date of a general meeting of
8 the adult members of those listed on the roll to
9 nominate candidates from among the adult
10 members listed on the roll for election to the
11 Native Hawaiian Interim Governing Council.
12 The criteria for candidates to serve on the Na-
13 tive Hawaiian Interim Governing Council shall
14 be developed by the adult members listed on the
15 roll at the general meeting. The general meet-
16 ing may consist of meetings on each island or
17 at such sites as to secure the maximum partici-
18 pation of the adult members listed on the roll.
19 Such general meeting (or meetings) shall be
20 held within 30 days of the Secretary's an-
21 nouncement.

22 (B) ELECTION.—Within 45 days of the
23 general meeting (or meetings), the Secretary
24 shall assist the Native Hawaiian community in
25 holding an election by secret ballot (absentee

1 and mail balloting permitted), to elect the mem-
2 bership of the Native Hawaiian Interim Govern-
3 ing Council from among the nominees submit-
4 ted to the Secretary from the general meeting.
5 The ballots shall provide for write-in votes.

6 (C) APPROVAL.—The Secretary shall ap-
7 prove the Native Hawaiian Interim Governing
8 Council elected pursuant to this subsection if
9 the requirements of this section relating to the
10 nominating and election process have been met.

11 (2) POWERS.—

12 (A) IN GENERAL.—The Native Hawaiian
13 Interim Governing Council shall represent those
14 on the roll in the implementation of this Act
15 and shall have no powers other than those given
16 to it in accordance with this Act.

17 (B) TERMINATION.—The Native Hawaiian
18 Interim Governing Council shall have no power
19 or authority under this Act after the time which
20 the duly elected officers of the Native Hawaiian
21 governing body take office.

22 (3) DUTIES.—

23 (A) REFERENDUM.—The Native Hawaiian
24 Interim Governing Council shall conduct a ref-
25 erendum of the adult members listed on the roll

1 for the purpose of determining (but not limited
2 to) the following:

3 (i) The proposed elements of the or-
4 ganic governing documents of a Native
5 Hawaiian governing body.

6 (ii) The proposed powers and authori-
7 ties to be exercised by a Native Hawaiian
8 governing body, as well as the proposed
9 privileges and immunities of a Native Ha-
10 waiian governing body.

11 (iii) The proposed civil rights and pro-
12 tection of such rights of the members of a
13 Native Hawaiian governing body and all
14 persons subject to the authority of a Na-
15 tive Hawaiian governing body.

16 (B) DEVELOPMENT OF ORGANIC GOVERN-
17 ING DOCUMENTS.—Based upon the referendum
18 authorized in subparagraph (A), the Native Ha-
19 waiian Interim Governing Council shall develop
20 proposed organic governing documents for a
21 Native Hawaiian governing body.

22 (C) DISTRIBUTION.—The Council shall
23 distribute to all adult members of those listed
24 on the roll, a copy of the proposed organic gov-
25 erning documents, as drafted by the Native Ha-

1 wailian Interim Governing Council, along with a
2 brief impartial description of the proposed or-
3 ganic governing documents.

4 (D) CONSULTATION.—The Native Hawai-
5 ian Interim Governing Council shall freely con-
6 sult with those listed on the roll concerning the
7 text and description of the proposed organic
8 governing documents.

9 (4) ELECTIONS.—

10 (A) IN GENERAL.—Upon the request of
11 the Native Hawaiian Interim Governing Coun-
12 cil, the Secretary shall hold an election for the
13 purpose of ratifying the proposed organic gov-
14 erning documents. If the Secretary fails to act
15 within 45 days of the request by the Council,
16 the Council is authorized to conduct the elec-
17 tion.

18 (B) FAILURE TO ADOPT GOVERNING DOCU-
19 MENTS.—If the proposed organic governing
20 documents are not adopted by a majority vote
21 of the adult members listed on the roll, the Na-
22 tive Hawaiian Interim Governing Council shall
23 consult with the adult members listed on the
24 roll to determine which elements of the pro-
25 posed organic governing documents were found

1 to be unacceptable, and based upon such con-
2 sultation, the Council shall propose changes to
3 the proposed organic governing documents.

4 (C) ELECTION.—Upon the request of the
5 Native Hawaiian Interim Governing Council,
6 the Secretary shall hold a second election for
7 the purpose of ratifying the proposed organic
8 governing documents. If the Secretary fails to
9 act within 45 days of the request by the Coun-
10 cil, the Council is authorized to conduct the sec-
11 ond election.

12 (c) ORGANIZATION OF THE NATIVE HAWAIIAN GOV-
13 ERNING BODY.—

14 (1) RECOGNITION OF RIGHTS.—The right of
15 the Native Hawaiian governing body of the indige-
16 nous, native people of Hawaii to organize for its
17 common welfare, and to adopt appropriate organic
18 governing documents is hereby recognized by the
19 United States.

20 (2) RATIFICATION.—The organic governing
21 documents of the Native Hawaiian governing body
22 shall become effective when ratified by a majority
23 vote of the adult members listed on the roll, and ap-
24 proved by the Secretary upon the Secretary's deter-
25 mination that the organic governing documents are

1 consistent with applicable Federal law and the spe-
2 cial trust relationship between the United States and
3 its native people. If the Secretary fails to make such
4 a determination within 45 days of the ratification of
5 the organic governing documents by the adult mem-
6 bers listed on the roll, the organic governing docu-
7 ments shall be deemed to have been approved by the
8 Secretary.

9 (3) ELECTION OF GOVERNING OFFICERS.—

10 Within 45 days after the Secretary has approved the
11 organic governing documents or the organic govern-
12 ing documents are deemed approved, the Secretary
13 shall assist the Native Hawaiian Interim Governing
14 Council in holding an election by secret ballot for the
15 purpose of determining the individuals who will serve
16 as governing body officers as provided in the organic
17 governing documents.

18 (4) VOTING ELIGIBILITY.—For the purpose of
19 this initial election and notwithstanding any provi-
20 sion in the organic governing documents to the con-
21 trary, absentee balloting shall be permitted and all
22 adult members of the Native Hawaiian governing
23 body shall be entitled to vote in the election.

24 (5) FUTURE ELECTIONS.—All further elections
25 of governing body officers shall be conducted as pro-

1 vided for in the organic governing documents and
2 ordinances adopted in accordance with this Act.

3 (6) REVOCATION; RATIFICATION OF AMEND-
4 MENTS.—When ratified by a majority vote of the
5 adult members of those listed on the roll, the organic
6 governing documents shall be revocable by an elec-
7 tion open to the adult members of the Native Ha-
8 waiian governing body, and amendments to the or-
9 ganic governing documents may be ratified by the
10 same process.

11 (7) ADDITIONAL RIGHTS AND POWERS.—In ad-
12 dition to all powers vested in the Native Hawaiian
13 governing body by the duly ratified organic govern-
14 ing documents, the organic governing documents
15 shall also vest in the Native Hawaiian governing
16 body the rights and powers to—

17 (A) exercise those governmental authorities
18 that are recognized by the United States as the
19 powers and authorities that are exercised by
20 other governments representing the indigenous,
21 native people of the United States;

22 (B) provide for the protection of the civil
23 rights of the members of the Native Hawaiian
24 governing body and all persons subject to the
25 authority of the Native Hawaiian governing

1 body, and to assure that the Native Hawaiian
2 governing body exercises its authority consistent
3 with the requirements of section 202 of the Act
4 of April 11, 1968 (25 U.S.C. 1302);

5 (C) prevent the sale, disposition, lease, or
6 encumbrance of lands, interests in lands, or
7 other assets of the Native Hawaiian governing
8 body without the consent of the Native Hawai-
9 ian governing body;

10 (D) determine the membership in the Na-
11 tive Hawaiian governing body; and

12 (E) negotiate with Federal, State, and
13 local governments, and other entities.

14 (d) FEDERAL RECOGNITION.—

15 (1) RECOGNITION.—Notwithstanding any other
16 provision of law, upon the approval by the Secretary
17 of the organic governing documents of the Native
18 Hawaiian governing body and the election of officers
19 of the Native Hawaiian governing body, Federal rec-
20 ognition is hereby extended to the Native Hawaiian
21 governing body as the representative governing body
22 of the Native Hawaiian people.

23 (2) NO DIMINISHMENT OF RIGHTS OR PRIVI-
24 LEGES.—Nothing contained in this Act shall dimin-
25 ish, alter, or amend any existing rights or privileges

1 enjoyed by the Native Hawaiian people which are
2 not inconsistent with the provisions of this Act.

3 (e) INCORPORATION OF THE NATIVE HAWAIIAN GOV-
4 ERNING BODY.—

5 (1) CHARTER OF INCORPORATION.—Upon peti-
6 tion of the Native Hawaiian governing body, the
7 Secretary may issue a charter of incorporation to
8 the Native Hawaiian governing body. Upon the
9 issuance of such charter of incorporation, the Native
10 Hawaiian governing body shall have the same status
11 under Federal law when acting in its corporate ca-
12 pacity as the status of Indian tribes that have been
13 issued a charter of incorporation under the authority
14 of section 17 of the Indian Reorganization Act (25
15 U.S.C. 477).

16 (2) ENUMERATED POWERS.—Such charter may
17 authorize the incorporated Native Hawaiian govern-
18 ing body to exercise the power to purchase, take by
19 gift, bequest, or otherwise, own, hold, manage, oper-
20 ate, and dispose of property of every description,
21 real and personal, including the power to purchase
22 lands and to issue an exchange of interests in cor-
23 porate property, and such further powers as may be
24 incidental to the conduct of corporate business, and
25 that are not inconsistent with law.

1 **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2 There is authorized to be appropriated such sums as
3 may be necessary to carry out the activities authorized in
4 sections 4, 6, and 7 of this Act.

5 **SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AU-**
6 **THORITY; NEGOTIATIONS.**

7 (a) REAFFIRMATION.—The delegation by the United
8 States of authority to the State of Hawaii to address the
9 conditions of Native Hawaiians contained in the Act enti-
10 tled “An Act to provide for the admission of the State
11 of Hawaii into the Union” approved March 18, 1959
12 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

13 (b) NEGOTIATIONS.—Upon the Federal recognition
14 of the Native Hawaiian governing body pursuant to sec-
15 tion 7(d) of this Act, the United States is authorized to
16 negotiate and enter into an agreement with the State of
17 Hawaii and the Native Hawaiian governing body regard-
18 ing the transfer of lands, resources, and assets dedicated
19 to Native Hawaiian use under existing law as in effect
20 on the date of enactment of this Act to the Native Hawai-
21 ian governing body.

22 **SEC. 10. DISCLAIMER.**

23 Nothing in this Act is intended to serve as a settle-
24 ment of any claims against the United States.

1 **SEC. 11. REGULATIONS.**

2 The Secretary is authorized to make such rules and
3 regulations and such delegations of authority as the Sec-
4 retary deems necessary to carry out the provisions of this
5 Act.

6 **SEC. 12. SEVERABILITY.**

7 In the event that any section or provision of this Act,
8 or any amendment made by this Act is held invalid, it
9 is the intent of Congress that the remaining sections or
10 provisions of this Act, and the amendments made by this
11 Act, shall continue in full force and effect.

○

MOKU O KOOLAUPOKO & KO'OLAULOA
AHA HAWAI'I 'OIWI
August 30, 2000

Senator Daniel K. Inouye
Vice Chairman, Senate Select Committee on Indian Affairs
Room 7-212, Prince Kuhio Federal Building
Honolulu, Hawaii 96850

TESTIMONY ON S.2899 RE: FEDERAL RECOGNITION

Aloha Senator Inouye and distinguished committee members:

We, MOKU O KOOLAUPOKO & MOKU O KO'OLAULOA, AHA HAWAI'I O'IWI, heeding the cries of our kupuna of HUI ALOHA AINA and HUI KALAI'AINA, hereby oppose S.B.2899 on the following grounds:

- 1) We oppose the bill because we will not get federal recognition until we crawl through a long maze of obstacles; it will be withheld indefinitely until the Secretary of Interior deems it appropriate to approve our organic governing document and election of government officers.
- 2) We oppose the bill which undermines the Kanaka Hawai'i Maoli (Native Hawaiians) right of self-determination by dictating the terms of our self-governance.
- 3) We oppose the bill because we cannot not stand by and allow the U.S. Congress to define the political status of the Kanaka Hawai'i Maoli.
- 4) We oppose the bill because we will not give up the Kanaka Hawai'i Maoli RIGHT to sovereignty and self-determination, free and clear of U.S. intervention.
- 5) We oppose the bill because it duplicates and compromises the native initiative process of Aha Hawai'i 'Oiwi (AHO) charged to propose a Native Hawaiian government.
- 6) We oppose the bill placing our affairs under the purview of the U.S. Department of Interior in light of its neglect and mismanagement of Native American affairs.
- 7) We oppose the bill because it reaffirms the authority and status of the State of Hawai'i, along with its jurisdiction over Native Hawaiian assets and programs; thus it is another attempt to cure an illegal act.

- 8) We oppose the bill because the ownership and title of land and natural resources is not defined.
- 9) We oppose the bill because there are five working groups providing input, only one is Kanaka Hawai'i Maoli; we had no say in the selections, while 80% of those providing input are non Kanaka Hawai'i Maoli.
- 10) We oppose the bill because it will doom the Kanaka Hawai'i Maoli to the sad fate experienced by Native Americans.
- 11) We oppose the bill because it divests us of, among other things, our right to autonomy over our external affairs and our right to continue treaty relationships.
- 12) We oppose the bill because it pre-ordains the fate of the Kanaka Hawai'i Maoli in the pre-selected political status of Nation within a Nation.
- 13) We oppose the bill because Kanaka Hawai'i Maoli will sell our souls for a meager \$30 million in annual federal funding that can expire soon or at the whim of Congress in exchange for a trillion dollar claim to a government that is independent of the U.S.
- 14) We oppose the bill because the long-range consequences to the Kanaka Hawai'i Maoli community are too high a price to pay.
- 15) We oppose the bill because "What we see may not be what we get" after this Bill is amended by Congress; there are no guarantees that we will get what we want.
- 16) We oppose the bill because it will FOREVER subject Kanaka Hawai'i Maoli to the ever changing tide of U.S. politics.
- 17) We oppose the bill because the political status offered undermines, and may forever extinguish, our rights to re-establishment of treaties with other nations, limits our rights to full trade and commerce with other countries, precludes our chances to receive foreign aid, World Bank funding, and hinders our ability to fully exercise our rights to the Exclusive Economic Zone (EEZ).
- 18) We oppose the bill because the proposed governing body would become the voice of the people at all levels and on all issues, thus the Independence voice would be excluded from this process.
- 19) We oppose the bill because the U.S. will have the final say on all Kanaka Hawai'i Maoli affairs.

WHAT DO THE KANAKA HAWAI'I MAOLI WANT?

- 1) We want to preserve our right and jurisdiction over the process of sovereignty and self determination, free and clear of U.S.intervention.
- 2) We want to determine our own political status; it is inappropriate for the U.S., the State of Hawaii or OHA to determine our political status.
- 3) We want to control the terms of HOW and WHEN we re-establish our nation, the Department of Interior will not dictate those terms.
- 4) We want to retain independent jurisdiction and control in management over our lands and assets.
- 5) We, alone, will determine certification. Kanaka Hawaii Maoli shall not subject ourselves to certification and approval by the U.S. to prove we are Kanaka Hawai'i Maoli.

ALTERNATE PROPOSAL TO S.2899, TASK FORCE ON HAWAIIAN AFFAIRS

Moku o Ko'olaupoko and Moku o Ko'olaupoko propose alternate legislation using the existing U.S. law to render a more appropriate solution.

THE GOAL IS TO PRESERVE NATIVE ENTITLEMENTS

It appears the primary motivation of this bill is to avoid the elimination of all Native Hawaiian programs currently funded by the government that may be considered "race-based" and thus a violation of equal protection under the 14th Amendment.

Because this is of primary concern, we suggest another approach to achieve the same result. There is a way to save Native Hawaiian programs without undermining the Kanaka Maoli right to freely choose a Native Hawaiian government of our own choosing, on our own terms, with little U.S. interference.

How do we save these programs and continue government funding, without being subject to constant race discrimination challenges following the Rice v. Cayetano decision? There is a way without precluding the right of all Native Hawaiians to choose other forms of political status, including independence over the form being asserted in the Akaka bill. We offer the following alternate proposal.

U.S. LAW ALREADY PROVIDES REMEDY FOR ALTERNATE PROPOSAL

If we must use U.S. law, then it is appropriate to use the existing apology law to provide the basis for solution. The apology law, P.L.No. 103-150, approved by the U.S. Congress, and signed by President Clinton in 1993, mandates the existing obligation to achieve a meaningful "RECONCILIATION" between Native Hawaiians and the U.S.

This federal law provides a proper and adequate basis for continuing all the existing "race-based" programs now enjoyed by Native Hawaiians as well as future Native Hawaiian programs under the federal mandate of P.L. No. 103-150. In short, alternate legislation can be introduced as part of the overall U.S. obligation set forth in the apology law, implementing the U.S. responsibility to initiate reconciliation measures to protect existing Native Hawaiian programs thus complying with the U.S. promise to make meaningful "reconciliation" efforts with Native Hawaiians.

If 14th Amendment advocates stand up and argue our programs are "race based", we can point to the "reconciliation" clause of the apology law and any subsequent amendments to that particular law as the proper justification for allowing such programs despite the dictates of the 14th Amendment. This alternate legislation will contain language that renders the following results:

1. **FIRST PROVISION OF RECONCILIATION** - provide the first step in complying with the existing U.S. obligation under federal law (P.L.103-150) to make meaningful "reconciliation" efforts with Native Hawaiians by preserving and protecting all existing and future Native Hawaiian programs receiving government funding as a measure of reconciliation.
2. **14TH AMENDMENT RENDERED INAPPLICABLE** - designate the "reconciliation" provision as the proper justification to render any 14th Amendment challenge as inapplicable.
3. **PRESERVE INTEGRITY OF NATIVE INITIATIVE** - preserve the integrity and recognize the validity of all existing native initiatives including the AHO process "to propose a Native Hawaiian government."
4. **ESTABLISH A SEPARATE FUND TO CARRY OUT NATIVE INITIATIVE** - provide separate funding to aid in carrying out the AHO mandate.
5. **JURISDICTION OF LANDS AND ASSETS** - declare an immediate moratorium on all land transfers by the State and U.S. Establish provisions to transfer lands and assets held by the state and federal governments to our sovereign entity.

6. **PRESERVE FREE CHOICE** - preserve all options available to Native Hawaiians in the right to freely exercise our choice on political status with the U.S.

Further details of this alternate proposal are shown in the "Proposal, New Appropriations Bill", attached hereto.

RESIST AKAKA BILL

MOKU O KO'OLAUPOKO & KO'OLAULO, AHA HAWAI'I 'O'IWI recommends "RESISTANCE" to the Akaka bill.

U.S. CONGRESS WILL SELECT KANAKA HAWAI'I MAOLI POLITICAL STATUS

The U.S. Congress, not the Native Hawaiian people, will make the choice as to political status for Kanaka Hawai'i Maoli.

If passed, the Akaka bill will grant federal recognition to Native Hawaiians but, unfortunately, simultaneously place us in a "nation within a nation" political status with the United States.

SO MUCH FOR THE RIGHT TO FREELY CHOOSE! This precious right will be taken away from us AGAIN repeating history once more...Repeating and perpetuating the same historical wrongs that the United States committed against our Nation, and against the supporters and members of both HUI ALOHA AINA and HUI KALAI'AINA (our kupuna who stood for INDEPENDENCE and restoration of our Queen Uliukalani and our government.)

"Nation within a nation" creates the sad political status that we see our Native Americans brothers dead-locked in. Token promises, talk and double talk, endless years of hopes and dreams dashed, no financial accountability for native trusts, relocation off of prime lands and blind justice to the Native Americans! In over a hundred years, has the U.S. Congress improved the lot for Native Americans? Are our brothers better off or worse off?

THE CHOICE MUST BE OURS

Our right to freely choose our political status cannot be undermined or taken away from our Kanaka Hawai'i Maoli 'Ohana.

Nor should the U.S. Congress exercise this right on behalf of Native Hawaiians.

We, Kanaka Hawai'i Maoli, (Native Hawaiians) have the right to freely choose the option of our choice regarding our political status with the United States. Our options include:

- 1) Integration (nation within a nation) and other variations,
- 2) Free association,
- 3) Independence (Nation to Nation)

We must ask ourselves whether the U.S. will restrain itself from DICTATING the terms as to WHEN, WHAT and HOW we reclaim our nation, as shown in the Akaka bill.

AKAKA BILL QUICK FIX- CURSE ON FUTURE OF KANAKA HAWAI'I MAOLI

Will the U.S. be honest with Kanaka Hawai'i Maoli through the AKAKA legislation? Do we acquiesce if we do not ask these key questions?

Has the U.S. been honest with Liliuokalani and the Native Hawaiian people? With all the U.S. laws and rhetoric will the U.S. manipulate and fool Native Hawaiians again? International law dictates that an occupying nation must use the law of the land they occupy! Did the U.S. comply? Did the U.S. use proper constitutional authority in annexing the Hawaiian Nation legally? Was the use of a "Joint Resolution", as opposed to a treaty, the proper vehicle to properly achieve annexation? Did the U.S. bother to ask the proper question of the rightful people to annex our Nation?

Are Native Hawaiians better off or worse off since U.S. intervention? We are at the bottom of the rung with the poorest social & economic statistics of any ethnic group statewide ever since we were forcefully placed under the jurisdiction and control of the wealthiest nation in the world!

NO GUARANTEES

Once the Akaka bill is introduced into Congress, will the Akaka bill remain in its present form or be amended and whittled down to what the U.S. Congress decides is best for Kanaka Hawai'i Maoli? Are there any guarantees for "what you see is what you'll get"?

Is the Akaka legislation a quick attempt to do the same thing? Thinly disguised as a measure proposed by the Native Hawaiian community? Five working groups are providing input to this legislation but only one is Native Hawaiian. How can Native Hawaiians exercise self-determination on our own terms if 80% of the input is provided by outsiders? Is this composite that purportedly represents the Native Hawaiian voice actually representative of all the Native Hawaiian community organizations, or are they simply hand picked

to draft the legislation the United States wants to see and hear because the criteria for this legislation "must follow" U.S. law?

Although your office and others indicate the door is open to pursue the political status option of independence or other options, there is, in fact, no specific language contained in S.2899 introduced into the 106th session of the U.S. Congress.

Those who argue "that we must obtain federal recognition as a unique and distinct aboriginal, indigenous, native people with whom the U.S. has a political, legal and trust relationship" are placing us exactly where the U.S. want the Kanaka Hawai'i Maoli to be placed..."under the jurisdiction, oversight and control of the U.S.

The Akaka bill authorizes the President to appoint all positions of those serving on the Native Hawaiian Interagency Task Force (pg.16, lines 7-20). However, there is no guarantee that a single member will be Kanaka Hawai'i Maoli. How is that for stacking the deck?

WOLF IN SHEEP'S CLOTHING

What are we giving up?.....Can the U.S. Congress answer these questions right now? Given the history of U.S. rhetoric, should Kanaka Hawai'i Maoli believe them? We trust Senator Akaka's heart to do the right thing, but can we trust the U.S. to consistently do the right thing for our people?

If we accept this legislation...and the political status being offered...what is the status of our ceded lands?...ceded land claims?....OHA settlement monies?...DHHL Lands? Under whose jurisdiction do the Kanaka Hawai'i Maoli affairs fall? Are all future generations condemned to this fate forever?

Will the Kanaka Hawai'i Maoli affairs be under Kanaka Hawai'i Maoli control?

DOOMED FOREVER?

The Akaka bill requires Department of Interior oversight. We need to look at the Native American experience that demonstrates the kind of treatment other Native Americans have suffered. As of last year, the Department of Interior mismanaged over \$2.4 billion as trustee for Native Americans trust funds and assets nationwide. It's gone and the Native Americans have nowhere to turn. Is this the type of treatment we really want? If Native Hawaiians accept this condition of Department of Interior oversight, what assurances do we have that we will be treated any differently?

How many Indian nations have been federally recognized by the U.S., then later obtained an independent status? Answer. None.

Why can't the Kanaka Hawai'i Maoli at least retain the dignity of making decisions on our own affairs?

TOO HIGH A PRICE TO PAY

In the rush to get some legislation passed this year by the U.S. Congress, S.B.2899 comes down to.....Kanaka Hawai'i Maoli giving up our claim for independence as our preferred political status.

Are we turning our backs on our KUPUNA who stood up and refused annexation in 1897? We, Kanaka Hawaii Maoli, cannot ignore our grandparents and great grandparents and the 38,554 signatures of our kupuna (ancestors) in the monster petitions against annexation to the U.S. The two months of hard work nationwide to secure such signatures to retain our independent, sovereign Nation of Hawai'i was submitted in unified protest but totally ignored by the U.S. Congress in 1898 and thereafter. Will this happen again?

The Akaka bill is advanced in order to save Native Hawaiian programs from losing government funding because they are allegedly "race based".

An estimated \$30 million annually for a brief period in exchange for giving up our trillion dollar claim to NATIVE HAWAIIAN INDEPENDENCE?

That is too high a price to pay.

Our ancestors would eat stone rather than give up their right to Independence.

HAWAIIAN NATION- NOW NOT LATER

THE LENGTH OF TIME TO COMPLETE THE PROPOSED PROCESS IS TOO LONG

Most of us will not be around by the time a Native Hawaiian Governing Body is put in place by the Akaka proposal. If this bill passes this Congressional session, the year 2000, how long will the Department of Interior take to set up the Office of Special Trustee? Will we have to wait for the presidential election and the appointment of a new head of the Interior Department? ONE year or TWO years until the year 2002?

Will the Office of Special Trustee (OST) need to wait for direction from the new Secretary of Interior and for eventual release of funding to start the Native Hawaiian process outlined in the Akaka bill?

Remember.....how the Special Trustee for American Indians, Paul Homan, never got the cooperation or funding promised to initiate any of the objectives set forth by Congress to make the Interior Department accountable for the management of trust assets and monies nationwide. A reported \$2.4 billion held by the Department of Interior on behalf of American Indians is unaccounted for. Paul Homan languished in his position at the Department of Interior until he realized that no action would ever be achieved through his position. The government bureaucracy won again.

Now that only happens to Native Americans, not to Native Hawaiians, right!

How long will it take to have the Attorney General designate a representative to assist the OST? (pg.15, L.21-25).

Members of the Native Hawaiian Interagency Task Force (ITF) will all be appointed by the President (pg.16, L.10-20). There is no guarantee that a single Kanaka Hawai'i Maoli will be appointed to the ITF. How long will that take?

How long will it take to establish a (9) nine member Commission to certify those that meet the definition of a Native Hawaiian? (pg.19, L.12-20). Will they be appointed or elected and by whom? There are no details as to how such Commission will be established. How long will it take to decide on the criteria for selection? Let's say such Commission is put in place and all the above appointments are made within ONE year, by the year 2003.

Realistically, it may take THREE to FIVE years for Native Hawaiians to prove we are CERTIFIED KANAKA HAWAI'I MAOLI. Petitions to add or remove a name to the roll may result in delays. Furthermore, the Secretary of Interior (SOI) shall certify that the roll is consistent with applicable federal law by publishing the roll in the Federal Register (pg.20, L.11-13). What happens if the SOI objects? Further delays may result. Say we are certified to vote by the year 2008.

But at what price per individual for documenting genealogy to the year 1893? If you are 18 years of age in the year 2000, arguably you will need birth certificates for yourself, then your parents born about 1980's, grandparents born about 1960's, great-grandparents born about 1940's, great-great grandparents born about 1920's, great-great-great grandparents born about 1900's, great-great-great-great grandparents born about 1890's. This is a

minimum of \$70.00 per Kanaka Hawai'i Maoli. What if marriage certificates or death certificates are required? We are now looking at another \$30.00 to \$40.00 per person to document proof.

The Secretary of Interior will be required to set up the parameters for the election by secret ballot to establish an Interim Governing Council? The Secretary must approve the nomination and election process (pg.26, L.6-10). There is no specific timeframe designated in which such approval must be made by the Secretary. Is it realistic to expect it will take a year? Say by the year 2009? Kanaka Hawai'i Maoli must wait until the Secretary of Interior approves the election results. How long will that take? Who will be the president at that time, and how will he direct the Secretary on this matter? Will it be politically correct to approve the nomination and election process, or will politics stand in the way to establish an Interim Governing Council by the year 2009?

The question that Native Hawaiians must ask is "Do we want to transfer ultimate control of our self-determination process from Hawai'i, our home, to Washington D.C. over 6,000 miles away and in that process duplicate all the many efforts already taken by various Native Hawaiian groups for the past decade in Hawaii, further extending the time to re-establish the nation? The referendum already answered in the affirmative in the 1996 Native Hawaiian Vote by over 22,000 Kanaka Hawai'i Maoli is "Shall the Hawaiian people elect delegates to propose a Native Hawaiian government?" However, if the Akaka bill is enacted, the Interim Governing Council will be required to conduct a referendum to ask additional questions but this time under the U.S. auspices.

Will it take another year to prepare and set up a ballot process to conduct a referendum? How long will it take to gather community input to prepare the referendum? What information is required to prepare the referendum? It will be necessary once again to conduct an education process on the referendum. Will that take up to TWO years to insure our people understand the process! Perhaps we will complete it by the year 2011?

If the referendum calls for us to proceed, thereafter, the Interim Governing Council will be required to develop a proposed organic governing document (OGD)(pg.27, L.16-21). How long will it take to draft such document? ONE year, perhaps TWO years, by the year 2013?

The Interim Governing Council is mandated to go out to explain the OGD. A process to educate the entire populace on the details of such document (which may be in the form of a constitution) will be required. Kanaka Hawai'i Maoli will also be required to incorporate proposed amendments based on community input. A process to educate may take ONE more year before we can VOTE TO RATIFY the Kanaka Hawai'i Maoli OGD in the year 2014?

The Interim Governing Council will have to establish procedures for a Ratification Vote. If the Ratification Vote is taken by 2015 (best case scenario), but the proposed document or constitution is not approved on the first round, then the delegates must reconvene to draft a revised document and re-submit it back to the Interim Governing Council to conduct a subsequent Ratification Vote at a later date. How long will that take?

The OGD if ratified by a majority vote must be approved by the SOI first, provided it is consistent with applicable federal law. If the SOI fails to make a determination within 45 days, the OGD is deemed approved (pg.29-L.20-25; pg.30, L.1-8). However, what happens when the SOI objects? Does it toll the time to act by the SOI indefinitely? If so, how are Kanaka Hawai'i Maoli protected from endless delays?

Assuming for the moment, it is ratified in the first round by a majority vote, an election will be conducted to determine who will serve as the new governing officers, consistent with the provisions set forth in the ratified OGD. How long will that take? Say by the year 2016? Will the Department of Interior fund an election to elect our new government officials? Will the funding take ONE year, TWO years or THREE years to be released? What year is it? All U.S. rhetoric aside, are we fooling ourselves again?

A key point to emphasize is that "Federal Recognition" to the Native Hawaiian Governing Body is withheld and NOT extended by the U.S., until and unless the SOI first approves the Kanaka Hawai'i Maoli organic governing document and approves the election of officers (pg.32, lines 15-22). If the SOI has concerns or objections, then where does that leave Kanaka Hawai'i Maoli? There is no time limit imposed on the SOI for approval. This loophole will permit the U.S. TO STALL SUCH APPROVAL INDEFINITELY!

From previous experience, the beneficiaries of Hawaiian Home Lands have suffered long years of delay and frustration before the U.S. Congress finally got around to approve suggested changes to the Hawaiian Homes Commission Act (HHCA). How long must we wait for final approval from the the U.S. through its Secretary of Interior as to federal recognition?

The year 2016 is a presidential election year. The best case scenario is that the new president is supportive. Otherwise we could easily be looking at FOUR or perhaps EIGHT years down the road before the federal government extends federal recognition to Native Hawaiians because the president can use his veto power to withhold his support. In year 2016, 2020, or 2024... when will we get a favorable response? An uncertain future to say the least.

Senators Inouye & Akaka, the majority of our moku delegates will be well over 70 years of age in the year 2016 and beyond. How old will you be? Will we ever see the re-establishment of a Hawaiian Nation in our lifetime...or will we only get to see the process of U.S. intervention into the affairs of our people because Congress passed S.2899 in the year 2000?

Will Kanaka Hawai'i Maoli trusts and assets be safe over the next 16 to 24 years from any further legal challenges? With no governing entity led by Native Hawaiians in the interim, who will control our assets? The State of Hawaii? The United States and the U.S. Congress? If Kanaka Hawai'i Maoli must wait this long to secure federal recognition, it is too late. All Native Hawaiian programs will have been eliminated by legal challenges.

What is S.2899 really doing to the KANAKA HAWAI'I MAOLI community? Is it really achieving what we want? Think carefully.

Is this bill a WOLF in SHEEP'S clothing?

PROTECTION OF RIGHT TO EXERCISE FREE CHOICE OF POLITICAL STATUS

We strongly recommend language be included in S.2899 which states that S.2899 leaves open the question of political status of Kanaka Hawai'i Maoli, and that S.2899 is not to be construed as extinguishing or diminishing the exercise of such rights.

cam-257: revised 8/22/00

PART II

MOKU O KO'OLAUPOKO & KO'OLAULOA
AHA HAWAI'I 'O'IM

REALITY OF FEDERAL RECOGNITION

What is FEDERAL RECOGNITION? Based on Native American history, federal recognition is coupled with "NATION WITHIN A NATION"; they go hand in hand. The FEDERAL REGISTER sets forth the guidelines and procedures for creating a sovereign nation within the United States of America. This process leads to "nation within a nation" (a form of integration). There are no other options. Kanaka Hawai'i Maoli are not being apprised of these facts.

Under S.2899, federal recognition is DEPENDENT on a sovereignty process which pre-selects our political status. It should be clearly understood that Federal Recognition is a benefit the United States can and should extend to Kanaka Hawai'i Maoli as a step toward reconciliation...NOT something we must pay for by giving up jurisdiction and control of our sovereignty process.

SEPARATE FEDERAL RECOGNITION FROM OUR SOVEREIGNTY PROCESS

Federal recognition must be SEPARATED from..... the sovereignty process! Kanaka Hawaii Maoli FEDERAL RECOGNITION must NOT be contingent on Kanaka Hawaii Maoli SOVEREIGNTY PROCESS as set forth in S.B.2899.

There is simply no need for the two to be linked together. Why is this being required as a condition of S.2899?

RETAIN JURISDICTION OF OUR SOVEREIGNTY PROCESS

Under INTERNATIONAL LAW, Kanaka Hawaii Maoli have the right to develop our own sovereignty process. We have the right to keep the jurisdiction of this process under OUR CONTROL, within our own AINA.

Recently, many protested State of Hawai'i Involvement in assisting and facilitating our sovereignty efforts in Hawai'i. So where is the logic in shifting control and oversight to the U.S. government that is 6,000 miles away? This paradigm shift will effectively deny ready access by grass roots Kanaka Hawai'i Maoli to the political powers in Washington, D.C.

POLITICAL STATUS vs. FEDERAL RECOGNITION?

Do the Kanaka Hawaii Maoli understand the difference between POLITICAL STATUS and FEDERAL RECOGNITION?

What is the urgency to make the two as one?

What does POLITICAL STATUS really mean?

What are the realities of POLITICAL STATUS?

Do our Kupuna know what "Political Status" means?

Do our Keiki know what "Political Status" means?

It is the RESPONSIBILITY of the Akaka Working Group, Office of Hawaiian Affairs, Aha Hawai'i 'O'iwi, the Royal Order of Kamehameha and other royal societies, Association of Hawaiian Civic Clubs, the Nation of Hawaii, the Kingdom of Hawaii, the Lawful Government, De Jure Hawai'i Kualoa Coalition, Ka Lahui Hawaii, and ALL groups who are truly concerned with the FATE of Kanaka Hawai'i Maoli to educate and inform our people about POLITICAL STATUS!

Under the dictates and jurisdiction of international law, we have the additional options relating to our choice of POLITICAL STATUS. These choices include:

1. INTERGRATION
2. FREE ASSOCIATION
3. INDEPENDENCE

A major problem with S.2899 is that the RIGHT TO CHOOSE is being denied because by ACT of the U.S. Congress the CHOICE OF POLITICAL STATUS will be made for the Kanaka Hawai'i Maoli.

Do we have to decide on our relationship with the United States now?

What do we WIN? More importantly, what do we LOSE?

WE CANNOT TURN OUR BACKS ON OUR ANCESTORS

Our ancestors, 38,554 of the 40,000 residing in Hawai'i in 1897, stood up to fight against annexation and for retaining independence. Two Kanaka Hawai'i Maoli groups named Hui Aloha Aina and Hui Kalai'aina walked the Hawaiian nation to every Island.....from shore to shore and collected these signatures in a short two month period without the aid of airplanes, telephone, fax, or email. They fought hard for the INDEPENDENCE of our Kanaka Hawai'i Maoli nation.

Over 100 years ago, the Nation of Hawai'i's choice for POLITICAL STATUS was usurped by the U.S. via the illegal overthrow. Will S.2899 sanction the overthrow by implicitly legitimizing the former actions taken by the U.S.?

OUR FIRST PRIORITY IS SOVEREIGNTY..... POLITICAL STATUS CAN COME LATER

As a first priority, Kanaka Hawai'i Maoli must protect our lands and assets. How fast do we want to get our land and assets protected? How fast do we want management and control of our assets?

Do we turn the sovereignty process over to the U.S. and go back to "square one" and start the process all over again?

FAST TRACK SOVEREIGNTY - Nation of Hawaii by the year 2002!

Keep Hawaiian Lands in Hawaiian Hands,
Keep Hawaiian Sovereignty in Hawaiian Hands,
Hawaiian Sovereignty NOW - "2 Years vs. 16 Years"!

Delegates of Ko'olaupoko and Ko'olaupoko propose a fast track to sovereignty. We urge Kanaka Hawai'i Maoli leaders to be akamai and utilize the existing momentum of the work accomplished by the Aha Hawai'i 'O'iwi (AHO) and make the process INCLUSIVE of all Kanaka Hawai'i Maoli community organizations and sovereignty groups.

Currently, Aha Hawai'i 'O'iwi is ready to introduce drafts of a constitution to the Kanaka Hawaii Maoli community for discussion and input. Debate teams, to include all sovereignty groups, can determine the merits of a good constitution. Working together at this juncture can unite our community and propel us to the next level of our own "native initiative".

"ELECTION 2000 - NEW ELECTION OF DELEGATES" can be proposed for December 2000. This election is meant to be inclusive! All the sovereignty groups or Kanaka Maoli community organizations can run delegates to the **"NATIVE HAWAIIAN CONVENTION 2000"**.

Aha Hawai'i 'O'iwi delegation will transfer all it's work to the newly elected delegates. The work of the Aha Hawai'i 'O'iwi will give this new convention a "running head start" because it will receive a combination of the work product, research and valuable community input. There is no need to "re-invent the wheel".

The **"NATIVE HAWAIIAN CONVENTION 2000"** will finalize OUR organic governing document for RATIFICATION and be charged with the responsibility **"to propose a Native Hawaiian government"**. We will ratify our organic governing document. At ELECTION 2002, we will elect our government officials!

Another **"FAST TRACK OPTION"** is to just declare ourselves reinstated as the Nation of Hawai'i!! **INSTANT PROTECTION!** Then Institute the same process

described above until we have ratified our governing document and elected our government officials.

The Aha Hawai'i 'O'iwi is an outstanding example of a Native Hawaiian Convention working together for a common goal. Let's keep the momentum going. Representation from all moku is "*DEMOCRACY IN ACTION*".

EFFECT OF A JOINT RESOLUTION- THERE CANNOT BE A DOUBLE STANDARD

Someone argued there is an urgent need to pass a law now and not rely on any prior joint resolutions passed by Congress. The argument is that the "APOLOGY LAW" was merely a joint resolution, but does not have the full force and effect of a law enacted by Congress. If that is true, the joint resolution annexing Hawai'i has no force and effect of a law, and annexation of Hawai'i to the U.S. never happened.

We, Kanaka Hawai'i Maoli, will never concede to the Joint Resolution of Annexation of Hawai'i to the U.S. in 1898. However, the U.S. is still using this joint resolution as JUSTIFICATION to bind Kanaka Hawai'i Maoli to its terms. Likewise, Kanaka Hawai'i Maoli must maintain the proper MINDSET, at all times, that we will also use the Joint Resolution - Apology Law as JUSTIFICATION to bind the U.S. to its terms.

Kanaka Hawaii Maoli will not allow a DOUBLE STANDARD! The U.S. cannot take inconsistent positions. "What's good for the goose is good for the quander."

The thinly veiled attempt of annexation in 1898 was in violation of treaties signed between the U.S. and the Kingdom of Hawaii, contrary to the written protests of Kanaka Hawai'i Maoli monster petitions, contrary to President Grover Cleveland's findings presented to Congress, and in direct violation of international law. However, the U.S. has consistently taken the position that Kanaka Hawai'i Maoli are bound by the terms of the joint resolution of Annexation. If the U.S. stands by that argument, then the U.S. is likewise bound by the terms of the Joint Resolution - Apology Law, also known as Public Law (P.L.)103-150, which acknowledges the illegal overthrow of the Kingdom of Hawaii, apologizes for such wrong, and requires the U.S. to make meaningful "reconciliation" efforts with Native Hawaiians.

ALTERNATE SOLUTION TO S.2899- SUPPLEMENTED & CLARIFIED

- 1) **FEDERAL RECOGNITION** - use reconciliation clause of apology law to extend federal recognition to Native Hawaiians effective the day the law is passed rendering 14th amendment challenges inapplicable, to avoid imposition of a 16 year wait or longer, subject to Secretary of Interior (SOI) approval for federal recognition per S.2899.

First, the U.S. Congress can protect all Native Hawaiian programs and funding, if the U.S. Congress provides protection as the first provision of "reconciliation" under the existing apology law (P.L.103-150) to render 14th amendment challenges (discrimination based on race) inapplicable. In exercising its reconciliation efforts, this is the very least that the U.S. government can do as a beginning step.

- 2) **SOVEREIGNTY TRUST FUND** - require the U.S. to fully fund our sovereignty process, by setting up a Trust Fund separate from U.S. intervention, to avoid control of funds by the U.S. as a ploy to force compliance by Kanaka Hawai'i Maoli per S.2899.

Second, the U.S. Congress may authorize but not necessarily release funding. Because it has such power, funding can be withheld or not released at all.....depending on the politics at the time. As such, the U.S. Congress and the Department of Interior (DOI) can use this as a tool to control the process by delaying funding. Instead, a separate fund should be established with a guaranteed amount set aside (in which U.S. Congress and DOI cannot withhold/control monies) to aid in carrying out the native initiative(s) process in Hawai'i with oversight by Native Hawaiians. Independent audits may be conducted for compliance to generally accepted accounting practices.

- 3) **RIGHT OF CHOICE** - preserve the right to choose amongst all options available as to political status to allow our governing entity, once in place, to negotiate with the U.S. and others at a later date on the issue of political status.

Third, under international law, we are entitled to freely choose any one of the options available, without interference by the U.S.

- 4) **FAST TRACK SOVEREIGNTY** - use the existing sovereignty process and Aha Hawai'i 'O'iwi (AHO) momentum transferring all community input received by AHO delegates to newly elected delegates. An election of delegates will be held "to propose a Native Hawaiian government" by December 2000. They will finalize an organic governing document for ratification, thus avoiding imposition of the process being taken away and controlled at the federal level per S.2899.

Fourth, instead of transferring the process and final decisions to the federal government level in Washington, D.C., subject to oversight by the Secretary of Interior, a liaison office should be set up here in Hawai'i with oversight by Native Hawaiians, limiting the Secretary to an advisory role. The U.S. should promote native initiative(s) using existing momentum by fast tracking sovereignty process separate from federal intervention, and fully fund the sovereignty process as a measure of reconciliation based on damages and injuries incurred.

5) OFFICE OF SPECIAL TRUSTEE- The U.S. President must appoint solely from nominations submitted by the Kanaka Hawai'i Maoli community.

Fifth, to avoid getting someone who knows little or nothing about our history and traditions, the Special Trustee must be nominated from numerous Kanaka Hawai'i Maoli organizations that may submit up to (3) three names to the U.S. President. The President must appoint the Special Trustee from only those so nominated. Duties should include those presently outlined in S.2899, excluding any language that attempts to control our sovereignty process.

PROBLEMS WITH S.2899

NO TIME LIMITS IMPOSED ON SECRETARY OF INTERIOR

There are at least three places in S.2899 that require Secretary of Interior (SOI) approvals, but no time limits are imposed for such approvals (pg.20, line 11-13; pg.26, line 6-10; pg.32, line 15-22). As such, depending on the politics at that point in time, the SOI can stall or withhold his approval indefinitely. This provision invites significant delay whenever the U.S. deems it necessary for political reasons.

DELAYS BY THE SECRETARY OF INTERIOR

Paul Homan, Special Trustee, appointed by the President, assigned to the Department of Interior, was denied cooperation and support by the SOI and languished in his position until his resignation, without achieving any of the Congressional objectives to correct the \$2.4 billion mismanagement of funds and assets for Native Americans nationwide. Likewise, in our case, if the SOI is not cooperative and unsupportive, we can find ourselves in a similar situation. Is this what we, Kanaka Hawai'i Maoli, really want?

Thank you for this opportunity to testify. Our contact person is Keoni K. Agard at (808) 261-4751. cam-258

We, the undersigned, duly elected representatives of the Native Hawaiian community, delegates of MOKU O KOOLAULOA and MOKU O KOOLAUKO, hereby sign our names to this document as descendants of HUI ALOHA AINA and HUI KALAI'AINA, pledging our bond to promote justice and freedom for Kanaka Hawai'i Maoli.

Edison Mui
 Verma E. P. Cweav
 Rene Mui
 Ruth Mui
 A. Mui
 Delia Mui
 cam 228
 James Mui
 Bumpy Mui
 Kani Mui
 Kani Mui

Proposal New Appropriations Bill

Revise Akaka's Bill to a "New Appropriations Bill"

1. Implement Public Law 103-150 (Apology Resolution)

As part of the reconciliation process to:

- a. Protect all Native Hawaiian Entitlements (Federal Funds; DHHL; OHA; etc.)
- b. Establish provisions to transfer lands and assets held by the state and federal governments to our sovereign entity.
- c. To completely fund our Constitutional Convention process, under International Criteria.

2. Once our Sovereign Entity is established then:

- a. Transfer all Entitlements as part of reconciliation, for Damages & Injuries.
- b. Transfer all OHA assets; DHHL Lands & Assets.
- c. Transfer immediate jurisdiction of all ceded lands.
- d. Negotiate Government to Government transitional Treaties.

